

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2319

B
P/S

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA

—against—

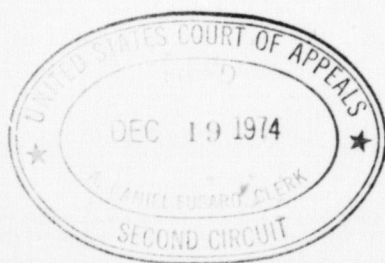
FRANK BREENE and JOHN INDIVIGLIO,

Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of New York

JOINT APPENDIX OF DEFENDANTS-APPELLANTS
JOHN INDIVIGLIO and FRANK BREENE

JOSEPH WINSTON
Attorney for Defendant-Appellant
John Indiviglio
101 Park Avenue
New York, N.Y. 10017
MU 6-6780



8

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
DOCKET ENTRIES	A1
INDICTMENT	A7
EXCERPTS FROM THE TESTIMONY OF TYLER SOMAS:	
Direct	A11
Cross	A26
EXCERPTS FROM THE TESTIMONY OF FAYE SOMAS:	
Direct	A31
Cross	A46
EXCERPTS FROM THE TESTIMONY OF FRANK AGUIAR:	
Direct	A54
Cross	A57
Redirect	A58
Recross	A59
EXCERPTS FROM THE TESTIMONY OF JOSEPH THOMPSON:	
Cross	A65
Recross	A75
Cross	A76
EXCERPTS FROM THE TESTIMONY OF REV. LYNNWOOD T. DEANS:	
Direct	A83
EXCERPTS FROM THE TESTIMONY OF LOUISE INDIVIGLIO:	
Direct	A87
Cross	A89
EXCERPTS FROM THE TESTIMONY OF FRANCIS BREENE:	
Direct	A92
Cross	A96
EXCERPTS FROM THE TESTIMONY OF JOHN INDIVIGLIO:	
Direct	A100
Cross	A101

TABLE OF CONTENTS
(Continued)


	<u>Page</u>
EXCERPTS FROM THE TESTIMONY OF JOHN BROPHY:	
Direct	A103
Cross	A105
MOTIONS FOR ACQUITTAL AND EXCERPTS FROM THE SUMMATION OF ASSISTANT U.S. ATTORNEY CHARLES WEINTRAUB	A108
TRANSCRIPT OF SENTENCING HEARING	A161

DOCKET ENTRIES

D. C. Form No. 100

CRIMINAL DOCKET

74 on 122

TITLE OF CASE		ATTORNEY
THE UNITED STATES		For XXX: BREEN-J.
US.		15 Park Row N.Y.C.
THOMAS MATTEO		Theodore Krieger
FRANK BREEN		401 Broadway,
JOHN INDIVIGLIA		Worth 6-5911
		For Defendant: INDIVIGLIA
		Ledwig J. Abrams
		64 Main St. - Fur.
		(516) 421-3800
		MATTEO-Stanley M. M.
		66 Court Street- 82

Did conspire to sell heroin

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED		
		DATE	NAME	RECEIVED
Fine,		6-21-74	Notice of Appeal	5 -
Clerk,		6-24-74	Pl. to Treas.	
Marshal,		10-4-74	Notice of Appeal	5 -
Attorney,		10-7-74	Pl. to Treas.	5 -
Commissioner's Court,		10/4/74	Notice of appeal (No fee)	
Witnesses,			BREEN)	
		10/11/74	Notice of Appeal M.H.	5
		10/15/74	Pl. to Treas. (MATTEO)	5

DATE	PROCEEDINGS
2-20-74	Before MISHLER, CH J - Indictment filed - ordered sealed by the Court. Bench Warrants Ordered and Issued for defts #2 and #3.

Docket Entries

A2

2-21-74	Before MISHLER, CH J. - Case called -Indictment ordered unsealed by the Court - Deft BREEN produced in court on a bench warrant - counsel for the deft present - deft BREEN arraigned and entered plea of not guilty - Bail set at \$25,000 bond with cash deposit of \$2,500 . Mr. William Kilroy and wife to sign as surety - deft is directed to keep in contact with his counsel - April 22, 1974 for trial.			
2-21-74	Bench Warrant ret'd and filed - executed (Breen)			
2-21-74	Notice of Appearance filed (Breen)			
2-21-74	By SCHIFFMAN, Magistrate - Order for acceptance of cash bail filed (FRANK BREEN)			
-7-74	Before Mishler, Ch J - case called - deft & counsel present - deft arraigned and enters a plea of not guilty - bail conditions contd - April 22, 1974 for trial. (THOMAS MATTEO)			
7-74	Notice of Appearance filed. (THOMAS MATTEO)			
7-74	Magistrate's file 74 M 278 inserted into CR file.			
25-74	Certificate of Engagement filed (Herbert Krohn, atty for deft Matteo) and letter dated Mar. 25, 1974 to counsel Herbert Krohn re deft Frank Breen etc. from Ch.Judge Mishler			
4-74	Before MISHLER, CH.J.- Case called- Deft and counsel present- Deft arraigned and enters a plea of not guilty- Motion by the govt to sever deft from trial set down for 4-22-74 is granted- Bail set at \$100.000 with wife of deft to sign as surety (INDIVIGLIO)			
4-74	Notice of appearance filed (INDIVIGLIO)			
5-74	Before MISHLER, CH.J.- Case called- Deft and counsel present- Counsel Herbert Krohn is relieved and the court appointed Legal Aid for deft			
5-74	By MISHLER, CH.J.- Order appointing counsel filed (BREEN)			
17-74	Magistrate's file 74 M 511 inserted into CR file.			
19-74	Before MISHLER, CH J - case called - deft Matteo & counsel H.Krohn present - motion by deft for an adjournment of the case that is set down for trial on 4-22-74. Motion granted and trial date adjd to June 10, 1974.			
22-74	Motion for severance filed (def't John Indiviglio) forwarded to Chambers.			
22-74	Before Mishler, Ch J - case called - adjd to June 10, 1974 for trial.			
30-74	Notice of readiness for trial filed			

Docket Entries

A3

4-74	Petition for Writ of Habeas Corpus Ad Testificandum filed. (Matteo)
-74	By Mishler Ch J - Writ Issued (Matteo)
-74	Petition for Writ of Habeas Corpus Ad Testificandum filed (Averso)
4-74	By Mishler, Ch J - Writ Issued, ret. June 7, 1974 (Averso)
-74	Notice of motion for discovery and inspection filed- ret. 6-21-74 (Indiviglio)
-10-74	Before MISHLER, CH J - Case called - defts Matteo & Breen present with counsels - Deft INDIVIGLIA severed from the trial - hearing on motion to suppress held - Both sides rest - Motion to suppress is denied - Hearing concluded - Trial ordered and BEGUN - Jurors selected and sworn - Trial continued to June 12, 1974.
-12-74	By Mishler, Ch J - Order filed apptg counsel filed (witness McCormack)
-12-74	Before Mishler, Ch J - Case called - defts Mattio & Breen present with counsel - Trial resumed - Court appointed Peter Passalacqua as counsel for the witness McCormack - Trial contd to 6-13-74.
6-13-74	Before MISHLER, CH.J. - Case called- Deft MATTEO and BREEN present with counsel- Trial resumed- The witness McCormack refused to and the court held him in contempt of court- Motion by Mr. Chrein for deft BREEN for mistrial is granted with consent of the Govt Deft BREEN severed from the trial- Motion by Mr. Krohn for deft for a mistrial is denied- The court having found the witness McCormack in criminal contempt of Court sentenced the witness to a term of prisonment for a period of one day- Govt rests- Motion by deft to dismiss is denied- Deft rests- Trial contd to 6-14-74 at 10:00 AM
6-14-74	Before MISHLER, CH J - case called - deft Matteo & counsel Herbert J Krohn present - trial resumed - both sides rest - motion by deft MATTIO to dismiss the indictment is denied - at 3:20 PM : Jury retired for deliberation- at 4:55 PM the jury returned and rendered a verdict of guilty as charged - Jury polled and Jury discharged - motion to set aside jury verdict is denied - Trial concluded - bail conditions contd - sentence adjd without date
6-14-74	By MISHLER, CH J - Order of sustenance filed - Lunch (15 persons)
6-17-74	By MISHLER, CH J - Order appointing counsel filed for deft BREEN
6-19-74	Voucher for compensation of counsel filed (FOR witness McCormack)
-21-74	Writ retd and filed

Docket Entries

A4

5-21-74	Before MISHLER, CH.J.- Case called- Motion for discovery and inspection argued- motion granted and denied in part as indicated on the record- (INDIVIGLIO) Trial set for 7-12-74 as to defts Indiviglio and Breen
5-21-74	Notice of appeal on contempt charges as to witness James McCormack filed
6-21-74	Docket entries and duplicate of notice of appeal mailed to c of a
6-27-74	By MISHLER, CH J - Order filed that the deft witness is hereby committed ^{to} the custody of the Attorney General for one day Having served the time of his sentence at the Federal House of Detention prior to the contempt, contemnor is discharged from Federal custody.
7/2/74	Copy of letter from C. Toy to Mr. Erlbaum filed.
7/12/74	Before Mishler, ChJ=Case called & adj'd to 8/12/74 for trial
7-15-74	Govts Notice of Readiness for Trial filed (BREEN & INDIVIGLIO)
8-9-74	Before MISHLER, CH.J.- Case called- Sentence adj'd to 9-13-74 on cont (MATTEO)
2-74	Before MISHLER, CH J - case called - defts Breen & Indiviglio present with counsel - trial ordered and BEGUN - Jurors selected and sworn - Trial to be contd to 8-12-74. Hearing on motion to suppress held - hearing to be continued on 8-12-74.
2-13-74	Before MISHLER, CH J - case called - defts Breen & Indiviglio present with counsels - hearing resumed and hearing concluded - motion to suppress is denied - trial resumed - Trial contd to 8-14-74 at 1:00 PM.
8-14-74	Before MISHLER, CH J - case called - defts BREEN not present - counsel present - deft INDIVIGLIO present with counsel - bail is revoked as to deft BREEN and bench warrant ordered - Motion by Mr. Krieger for deft BREEN FOR a severance is denied - Motion by deft INDIVIGLIA for mistrial is denied - trial resumed - Deft BREEN arrived in court at 4:05 PM - Govts. Ex. 38, 40, 41, 42, 43, 44, 45, 47, 48 and 49 for Id. are received in evidence - On motion by Mr. Krieger for deft BREEN the order of the Court to revoke bail and the ordering of the Bench Warrant is vacated - trial contd to 8-15-74.

Docket Entries

A5

15-74	Before MISHLER, CH J - case called - defts present with counsels - trial resumed - Hearing on motion to suppress held as to deft BREEN - motion to suppress is denied. Govt rests - motion by the defts for a mistrial is denied - motion by deft BREEN for a continuance is denied - Motion by the defts to dismiss the indictment is denied - Trial contd to 8-16-74 at 9:30 am. F.B.I. reports ordered sealed by the court for possible review by the Court of Appeals - on application by the Govt the bail is increased to \$75,000 surety company bond as to deft BREEN.
16-74	Before MISHLER, CH J - case called - defts BREEN & INDIVIGLIA present with counsels - trial resumed - motion by deft BREEN for a mistrial is denied - Both sides rest - motion by defts for judgment of acquittal is denied - At 4:00 PM the Jury retired for deliberations - at 9:25 PM the Jury returned and rendered a verdict of guilty as ^{charged} to each count as to each deft - Jury polled and jury discharged - all motions reserved to time of sentence - sentences adjd without date - trial concluded - bail conditions continued.
16-74	By MISHLER, CH J - 2 Orders of Sustenance filed (Luncheon & Dinner)
19-75	5 Volumes of stenographers transcripts filed (one dated 8-12-74; two dated Aug. 13, 1974; one dated 8-14-74 and one dated 8-15-74.)
26-74	By Mishler, Ch J - Order releasing bail filed (FRANK BREEN)
29-74	Stenographers Transcript dated 8-16-74 filed
13-74	Before MISHLER, CH.J.- Sentence adjd to 10-4-74 on consent ()
-24-74	Letters from deft Breen; William Kilroy (surety) and cover letter Judge Mishler to Theodore Krieger, esq. filed
27/74	Before MISHLER, CH.J.- Case called- Motion argued to reduce Motion denied
-3-74	Voucher for Expert Services filed (Breen) Pre Trial hearings, etc.
-3-74	Voucher for Expert Services filed (Breen & Matteo) motion to suppress & trial proceedings.
1/4/74	Before MISHLER, CH.J.- Case called- Defts and counsel present- Motion deft MATTEO to adjd the sentence is denied- motion argued to set aside verdict etc. is denied- deft sentenced to a term of imprisonment for period of 10 years and a special parole term of 5 years- Court advised of his right to appeal bial condition contd pending appeal

Docket Entries

A6

10/4/74	Before MISHLER, CH. J. - Case called - Defts and counsels present - Deft <u>INDIVIGLIO'S</u> motion to set aside the verdict, etc. is denied - deft sentenced to imprisonment for a period of 12 years and a special parole term of 5 years - Court advised deft of his right to appeal - Clerk to file notice of appeal with fee - Bail conditions contd pending appeal
	Deft <u>BREEN'S</u> motion to set aside the verdict is denied - Motion to set aside sentence date argued - denied - deft sentenced to imprisonment for a period of 7½ years and a special parole term of 5 years - Court advised deft of his right to appeal - Clerk to file notice of appeal without fee - Bail reduced to \$50,000.00 surety, \$2,500.00 cash deposit - Bond to be signed by Mr. and Mrs. Crichton and Mr. Kilroy - Deft <u>MATTEO'S</u> motion to set aside sentence dated argued - denied - motion to set aside the verdict etc. is denied - deft sentenced to a term of imprisonment for a period of 12 years and a special parole term of 5 years - Court advised deft of his right to appeal - Bail conditions contd pending appeal
10/4/74	Judgments and Commitments filed - certified copies to Marshal (MATTEO)
10/4/74	Notice of appearance filed (MATTEO)
10/4/74	Notice of appeal filed (w/fee INDIVIGLIO) (w/out fee BREEN)
10/4/74	Docket entries and duplicate of notice of appeal mailed to court of appeals (INDIVIGLIO and BREEN)
10/11/74	Notice of appeal filed (MATTEO)
10/11/74	Docket entries and duplicate of notice of appeal mailed to court of appeals (MATTEO)
10-15-74	Certified copy of Judgment & Commitment ret'd and filed - deft BREEN delivered to Federal Detention Headquarters.
10-16-74	Letter dated Oct. 15, 1974 filed received from Herbert J. Kohn, Esq. indicating Stanley Meyer, Esq. is substituted counsel, etc. and all matters should be directed to him, etc. (Matteo)
10/18/74	Stenographers Transcript dated 6/10/74, 6/12/74, 6/13/74 and 6/14/74 filed
10-22-74	Record on Appeal certified and mailed to the Court of Appeals (MATTEO)
10-29-74	Acknowledgment received from the Court of Appeals for receipt of Index to Record on Appeal (MATTEO)

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

-vs-

THOMAS MATTEO
FRANK BREEN
JOHN INDIVIGLIA,

Defendants.

- - - - -X

INDICTMENT

21 U.S.C. Secs.173
174, 841, 846
18 U.S.C. Sec.2

THE GRAND JURY CHARGES:

COUNT I

On or about and between the 1st day of October, 1967 and the 27th day of September, 1972, both dates being approximate and inclusive, within the Eastern District of New York, the defendant THOMAS MATTEO, the defendant, FRANK BREEN and the defendant JOHN INDIVIGLIA, wilfully, unlawfully and knowingly did combine, conspire, confederate and agree together and with each other and with Frank Aguiar and James McCormack and with others to violate prior to May 1, 1971, Sections 173 and 174 of Title 21, United States Code, and on and after May 1, 1971, to violate Sections 812, 841(a)(1), 841(b)(1)(A), 951(a)(1) and 952 of Title 21, United States Code.

1. It was part of the said conspiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and

knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotics drugs, to wit, heroin, the exact amount thereof being to the Grand Jury unknown after the said narcotic drugs had been imported and brought into the United States in violation of Sections 173 and 174 of Title 21, United States Code.

2. It was further a part of said conspiracy that on and after May 1, 1971, the said defendants unlawfully, willfully and knowingly would distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

COUNT II

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Eastern District of New York and elsewhere.

1. On or about February 1, 1968, the defendant THOMAS MATTEO met with co-conspirator James McCormack and the defendant JOHN INDIVIGLIA at the home of McCormack in the Eastern District of New York.

2. On or about and during the month of November, 1969, the defendant FRANK BREEN met with co-conspirator Frank Aguiar at

Aguiar's home in the Eastern District of New York.

3. On or about and during the month of May, 1971, the defendant THOMAS MATTEO, met with co-conspirator Frank Aguiar at Aguiar's home in the Eastern District of New York.

4. On or about September 26, 1972, the defendant THOMAS MATTEO spoke telephonically with co-conspirator Frank Aguiar in the Eastern District of New York.

5. On or about September 27, 1972, the defendant THOMAS MATTEO travelled and entered the home of defendant JOHN INDIVIGLIA in the Eastern District of New York.

A TRUE BILL

FOREMAN

EDWARD J. BOYD 5th
UNITED STATES ATTORNEY

EXCERPTS FROM THE TESTIMONY OF TYLER SOMAS

[Pages A11 through A29 following]

1 [24]

Somas-direct

All

2 THE COURT: If any juror doesn't hear any of
3 the testimony raise your right hand and I will have
4 the witness repeat it. It is vital that every juror
5 hear every word of testimony.

6 DIRECT EXAMINATION

7 BY MR. WEINTRAUB:

8 Q Mr. Somas, who owned that auto parts store?

9 A Mr. Indiviglio.

10 Q Mr. Indiviglio?

11 A Yes.

12 Q Do you see Mr. Indiviglio in Court?

13 A Yes, I do.

14 Q Would you point him out?

15 A The gentlemen sitting at the end, over there
16 (indicating).

17 THE COURT: Let the record show that the witness
18 pointed out the defendant, John Indiviglio.

19 MR. ABRUZZO: Conceded, your Honor.

20 Q How long did you continue to work in that auto
21 parts store?

22 A I think off and on for almost a year.

23 Q Almost a year?

24 A Yes.

25 Q Did you notice anything unusual about the auto

part store?

A Well, the term "unusual" --

Q Was there anything that struck you as being out of the ordinary?

A It was run a little loosely.

Q Was there anything on the premises that caught your attention?

A A number of vehicles in the back yard.

Q What kind of vehicles?

A Some kind of foreign cars.

Q What was the condition of the cars?

A They were just lying there, more or less -- just lying there. They looked like perfectly good cars.

Q Do you know the make of the cars?

A No, I didn't. I'm sorry. I knew they were foreign. We used to call them "turtles".

Q Turtles?

A Turtles.

Q Did they appear to be used or new?

A They were not exactly brand new but they were more or less rotting away in the back.

Q Did they have license plates on them?

A No, they didn't.

THE COURT: Were they there when you first came

1 [26]

Somas-direct

A13

2 to work at the auto parts place?

3 THE WITNESS: Yes, they was.

4 Q Did Thomas Matteo work at that auto parts
5 store also?

6 A I got him a job there, yes.

7 Q When was that?

8 A I believe it was toward '66, maybe the beginning
9 of '66.

10 Q Directing your attention to the Spring of 1968
11 did you have any contact at that time with Mr. Matteo?

12 A Yes, I believe I did.

13 Q For what purpose?

14 A I think that he at that particular time had
15 approached me about selling heroin with him.

16 Q What did you do in response to that?

17 A We worked out some sort of arrangement. He
18 was up for a sentencing charge, I believe and he wanted some-
19 one to handle his business affairs while he was in jail.

20 Q Did you deal in heroin before that?

21 A No, I did not.

22 Q Was anybody else involved at that time?

23 A I believe Mr. McCormack, Jimmy McCormack was.

24 Q Jimmy McCormack?

25 A Yes.

Q During that period of time do you know where Mr. Matteo was living?

A Well, there came a period when he was arrested on a charge and I believe after I got him the job at Certified Auto Parts he moved into one of Mr. Indiviglio's apartments with his fiance.

Q Where was that apartment?

A It was in Bayside off Northern Boulevard, maybe 212th or 213th Street.

Q Was Mr. Matteo living there in the Spring of 1968?

A Yes, I think it was around that particular period of time, yes.

Q Were you ever in that apartment?

A Yes, I was.

Q Was anybody else in there with you?

A Well, first -- well, in Tommy's apartment I used to pick him up there quite frequently --

THE COURT: "Tommy" being Mr. Matteo?

THE WITNESS: Yes.

A (Continuing) he lived upstairs.

Q What was downstairs?

A There was a storage area that Mr. Indiviglio used to keep furniture in.

1 [28]

Somas-direct

A15

2 Q Was there anything else in the house?

3 A Yes, some chemical equipment; glasses, flasks
4 and things like that.

5 Q Were you -- how many times would you say you
6 were in that house in the Spring of 1968?

7 A Now, in Mr. Matteo's apartment or downstairs?

8 Q In the lab section?

9 A I think I was only in there twice.

10 Q Who else was present?

11 A Mr. Mattei and I believe Mr. Indiviglio was
12 there on one occasion.

13 Q On one occasion?

14 A Yes.

15 Q Was Mr. McCormack ever there?

16 A He might have been. I'm just not positive
on that.

18 Q Why were you there, in the lab portion?

19 A I believe we had taken some furniture --
20 Mr. Indiviglio had a few houses and we took furniture from
21 one house to store it there. He used it for storage, that
22 particular area.

23 MR. WEINTRAUB: Excuse me for just a moment,
24 your Honor.

25 (Pause.)

Q Was there ever an exchange of any narcotic drugs during those meetings?

A I think at one time Mr. Matteo did have something. I went there once -- this would be upstairs in Mr. Matteo's apartment -- we picked up something. I believe I went over there with Mr. Matteo and we picked it up. He had it there for the specific reason of giving it to Jimmy McCormack to analyze.

Q Were you present when heroin was given to Mr. Matteo or Mr. James McCormack by the defendant Mr. Indiviglio?

A No, I wasn't.

MR. ABRUZZO: Are we going to allow --

THE COURT: You have an objection?

MR. ABRUZZO: Yes. I object to the leading of the witness.

THE COURT: Objection overruled.

MR. WEINTRAUB: May we have this marked?

THE CLERK: Grand Jury Minutes marked Government's Exhibit 11 for identification.

(So marked.)

(Continued on next page)

DIRECT EXAMINATION

BY MR. WEINTRAUB CONTINUING:

Q Do you recall appearing before the Grand Jury,
Mr. Somas?

A Yes, I do.

Q May 9, 1973, more or less?

A Yes.

Q Reading from Page 8 --

MR. KRIEGER: Objected to, your Honor.

THE COURT: I won't allow it.

Show it to the witness.

Q I'd like you to read the question beginning
with Line 24 Page 8 and continuing to the completion of
Line 9 Page 9?

A That's Line --

THE COURT: No, to yourself, read it to your-
self.

MR. WEINTRAUB: To yourself.

THE WITNESS: All right.

(Pause.)

THE WITNESS: Yes, I probably did say this.

THE COURT: No, the question is, does that
refresh your recollection.

THE WITNESS: Yes, it does, quite a bit.

1
2 Q It does?

3 A Yes.

4 Q I ask you again, Mr. Somas, whether or not you
5 were present when Mr. Indiviglio gave any drugs to either
6 Mr. Matteo or Mr. McCormack?

7 A I believe he might have given some to Mr. Matteo.

8 You see, the samples were usually left in a
9 place where Mr. Matteo would pick them up and give them to
10 Mr. McCormack and Mr. McCormack would try them.

11 Now, there might have been an occasion I was
12 there when John handed them over. I'm not positive. It was
13 a long time ago and my memory just is not that good.

14 Q I'm going to read the questions and answers
15 you gave and I ask you if that in fact --

16 MR. KRIEGER: Objected to.

17 THE COURT: I won't allow it.

18 I will allow you to use it as a refresher
19 memorandum.

20 MR. WEINTRAUB: Do I understand your Honor to
21 say you will allow it?

22 THE COURT: No, I won't allow it.

23 MR. WEINTRAUB: I offer those questions as
24 affirmative evidence.

25 THE COURT: The jury may be excused.

2 Q Would you tell the ladies and gentlemen of
3 the jury the arrangement that you had with Mr. Matteo when
4 he was to begin serving his sentence as far as his business
5 was concerned?

6 A Yes.

7 I was to handle the transactions of heroin
8 and I was to give his family a percentage of the money.
9 I think we agreed on twenty or thirty percent per week.

10 Q Where would you get the heroin?

11 A At that particular time I was getting it
12 through a friend of Jimmy McCormick's, a Mr. Teddy Miller.

13 Q How did you meet him?

14 A Tommy introduced me to him.

15 Q To whom were you selling heroin?

16 A Jimmy was getting some and Frank Aguiar.

17 Q Anybody else?

18 A Sonny Alocco.

19 Q How much heroin were you buying at that time?

20 A I was picking up -- First I was picking up
21 ounces and then it went to eighths.

22 Q Did you have any other discussions with
23 Matteo about taking over his business and about narcotics
24 transactions prior to his going to jail?

25 A Yes. I was informed that if Mr. Indiviglio

1
2 ever needed any money I was to advance it to him for pur-
3 poses of taking a trip overseas.

4 THE COURT: Now, of course, this is a conver-
5 sation this witness says he had with Mr. Matteo,
6 and in the conversation the defendant Indiviglio's
7 name is mentioned.

8 Normally, an accused is not bound by anything
9 anyone else says, but only by what he says or does.

10 The charge here is conspiracy, and the
11 analogy if the conspiracy is a legitimate partner-
12 ship.

13 In a legitimate partnership, for example,
14 if one of you and myself were in the grocery business
15 and you were the lady or man behind the counter, and
16 I was doing the buying, if I went out and bought
17 a thousand cases of corn, the partnership would
18 be bound to pay it, though you might have not
19 thought corn was needed or should have been bought,
20 and even though you didn't know that the purchase
21 was being made, because I, as your partner, became
22 the agent for the partnership, so that anything
23 I buy during the term of the partnership and for
24 the business of the partnership binds you as a part-
25 ner and any other partner. So in a criminal con-
spiracy.

Somas-direct

What this witness says the conversation was with Matteo is in no way binding on either of these defendants, but if the Government proves beyond a reasonable doubt that the conspiracy alleged in the indictment existed during the terms of the conspiracy and for purposes of the conspiracy, and the purpose of the conspiracy was to deal in heroin, if they prove that beyond a reasonable doubt and they prove that either Mr. Matteo or Mr. McCormick were members of that conspiracy, then if the Government proves that the accused or both of them -- one or both -- knowingly and willfully entered into that conspiracy, then that means that they were aware that there was an arrangement or an agreement to deal in heroin and that they became participants in the activity dealing in heroin willfully, knowing that it was a violation of law to deal in heroin, and then whatever any member of the conspiracy says or does during the term of the conspiracy and to advance the purpose of the conspiracy, binds the accused that you found knowingly and willfully entered into the conspiracy.

Of course, if the Government fails to prove that either of these defendants knowingly and willfully

Somas-direct

entered the conspiracy and that's by proof beyond a reasonable doubt, then just disregard the testimony about conversations held outside their presence.

Go ahead, Mr. Weintraub.

BY MR. WLINTRAUB:

Q Mr. Somas, in that conversation did Mr. Matteo tell you the purpose of the overseas trip?

A Yes.

Q What was that?

A That was for Mr. Indiviglio to get a connection for heroin in France.

Q What does "a connection" mean?

A A source of heroin.

THE COURT: If the heroin came from France, what was the purpose of the lab?

THE WITNESS: The way I understood it, your Honor -- then at this time I was green to the business -- I understood he was trying to make synthetic heroin. That's what I was told.

THE COURT: Now, the conversations that this witness says he had with Mr. Matteo in which Mr. Matteo was quoted may not be used to make a determination as to whether Mr. Matteo entered into the conspiracy. It must be proof of what Mr. Matteo

[43]

Somas-direct

believe him, and if you understand what the conversation was, then what Mr. Indiviglio said may be considered by you in determining whether he entered into the conspiracy, because this witness is testifying as to what Mr. Indiviglio said as distinguished from the other testimony where he was relating a conversation had with Mr. Matteo in which Mr. Indiviglio was referred to.

I just want to give you the example, so you understand the difference.

MR. WEINTRAUB: Thank you, your Honor.

Q Mr. Somas, were there any other conversations after this most recent one that you related about the same subject?

A Not while Matteo -- Tony was still out.

Q Any after he was in jail?

A Yes. After he left a while, there was, yes.

Q How long would you say after Mr. Matteo went to jail?

A I don't think it was more than three months, top -- three, four months maybe, maybe even less.

Q And who did you have that conversation with?

A With John Indiviglio.

Q Mr. Indiviglio, the defendant?

[62]

Somas-direct

(Whereupon the jury entered the courtroom
and were seated in the jury box.)

DIRECT EXAMINATION (CONTINUED)

BY MR. WEINTRAUB:

Q Directing your attention again to 1971, the
early part of 1971, did you have occasion then to see Mr. In-
diviglio?

A Yes, I did.

Q Where did you see Mr. Indiviglio?

A I believe at his house in Long Island.

Q Do you know what town it is?

A Huntington or Northport.

Q Do you recall why you went out there?

MR. KRIEGER: Objection.

THE COURT: Sustained. "Why" is an improper
question.

Q Did you have a conversation with Mr. Indiviglio?

A Yes, I did. It seems Mr. Matteo --

THE COURT: Tell us the conversation.

THE WITNESS: The reason I went there,
Mr. Indiviglio had a heart attack. I knew he was in
hell, and I stopped out to see him. I got out there,
and Mr. Indiviglio had told me that Mr. Matteo had
owed him a sum of money, and we both knew that Mr.
Matteo was making a lot of money now, and he wondered

dealings.

Q You described earlier some imported automobiles that you saw certified --

A Yes.

Q Did you see any cars of that type when you were at Mr. Indiviglio's house in the summer of 1971?

A Yes, there was one in the driveway.

Q Did you have any discussion with Mr. Indiviglio about that car in his driveway?

A Yes, I asked him about it and he had told me that he had given one to his daughter and he had this one here for his wife.

MR. WEINTRAUB: I have no further questions.

THE COURT: We'll suspend at this point.

You may step down, Mr. Somas.

The case will continue tomorrow at ten o'clock.

Now, that means that you should get into the courthouse about 9:30 or twenty to 10:00. You register downstairs first and after you register you come to the jury room adjoining this courtroom.

I expect that I'll start promptly at 10:00. If one juror is late, it means that we have to wait, so I ask you please to come in on time. I suppose if you got here twenty of ten it would give you

THE COURT: Mr. Abruzzo.

MR. ABRUZZO: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. ABRUZZO:

Q Mr. Somas, I would like to go back to your testimony yesterday. I believe that you testified at the opening of your testimony yesterday that sometime in 1965 you were employed by Certified Auto Parts; is that correct?

A I believe it was '65.

Q And sometime after you worked there you brought over Mr. Matteo for a job?

A Yes.

Q Prior to the time that you brought Mr. Matteo there, had Mr. Indiviglia or Mr. Matteo ever met?

A Not to my knowledge. I don't think they have.

THE COURT: You will have to speak a little louder.

Q You knew Mr. Matteo?

A Yes, I grew up with him.

Q You knew him a long time since you were a young man; is that what you testified to?

A Yes.

Q When did you first meet Mr. Indiviglia?

A I believe it was in 1965.

1 testimony, on one occasion you saw Mr. Indiviglia there; is
2 that correct?
3

4 A I am not positive, no.

5 Q No. You don't know whether it was at a time
6 when you were delivering furniture there or at some other
7 time?

8 A I know one time for sure he was there when we
9 took some furniture in.

10 Q That's the time you are positive of?

11 A Yes.

12 Q At that time there was no illegal drugs there,
13 right?

14 A No, the lab set-up was there. There wasn't
15 any illegal drugs that I saw.

16 Q This lab set-up that you are talking about,
17 did you -- withdrawn.

18 I believe it was your testimony today, Mr. Somas, to
19 get to another subject, that sometime in the early part of
20 1973 you were arrested in Suffolk County; is that correct?

21 A Yes.

22 Q And that you were charged with certain crimes
23 relating to the possession of a gun; is that correct?

24 A Yes.

25 Q And that sometime in 1970 you were also

5

Somas-voir dire

CONTINUED CROSS-EXAMINATION

BY MR. ABRUZZO:

Q Mr. Somas, I believe it was your testimony that you had a discussion with Mr. Trainor from my office; is that correct?

A Yes.

Q And that you had asked him to contact certain individuals for you who helped arrange for your bail; is that correct?

A I believe I just asked him to ask Mr. Indiviglio, I don't think -- I might have asked him to contact other people, but I knew he was Mr. Indiviglio's attorney.

Q All right.

In regard to Mr. Indiviglio, you had asked him to help arrange for your bail --

A Yes.

Q Is that right?

A Yes, definitely.

Q Now, how was your bail finally arranged when you finally got out?

A My aunt put up her house.

Q So Mr. Indiviglio never helped you?

A No, he didn't.

6

Somas-cross

Q You are here now to testify as to the things that the government claims that he did; is that correct?

MR. WEINTRAUB: Objection, your Honor.

THE COURT: Overruled; I will allow that.

THE WITNESS: I imagine so, yes, sir.

Q And back in March, back in March and April and May and June, when you spoke to Mr. Dillon, when you wrote these letters, you were very anxious to get out of jail, weren't you?

A Yes, oh, yes.

Q And when you made those statements to the United States Treasury Agents or Drug Administration agents in June of '73, you were very anxious to get out of jail, weren't you?

A Yes.

Q When you testified at that grand jury, you were anxious to get out of jail, weren't you?

A Well, I think by that time I was already a little more adjusted to it.

Q In May?

A Yes.

Q More adjusted than you were in June, when you made the statement?

A Um-hmm, um-hmm.

EXCERPTS FROM THE TESTIMONY OF FAYE SOMAS

[A31 through A52 following]

F. Somas-direct

A Mr. Matteo was a friend of Tyler's.

I met him once before I moved in on March 20th, but Mr. Matteo and his girlfriend -- I believe it is his wife -- Jean, used to come over to the apartment, or we'd go out to dinner with them. We'd see them socially, either in our apartment, and a couple of times, we went over to their apartment, they shared. I believe it was in Flushing.

Q What was Tyler doing for a living at that time?

A He was selling heroin.

Q Do you know where he was getting the heroin from?

A I believe he was getting --

THE COURT: Not from what your husband said, but did you ever see anyone deliver heroin to him?

THE WITNESS: Tommy Matteo on two occasions.

BY MR. WEINTRAUB:

Q Were you ever present on any other occasions when heroin was delivered to Tyler Somas?

A Yes, I was.

Q When was that?

A Three more occasions, Frank Breene gave Tyler half an ounce; another time it was an ounce, and the last time, it was a pound.

Q Do you see Frank Breene in the courtroom today?

1
4

F. Somas-direct

2 A Yes, I do.

3 Q Would you point him out for us --

4 MR. KRIEGER: Conceded.

5 THE WITNESS: Mr. Breene is sitting over there
6 with the white shirt, blue suit and blue tie.

7 MR. WEINTRAUB: Thank you, Mrs. Somas.

8 BY MR. WEINTRAUB:

9 Q When was the first time that you saw Mr. Breene
10 deliver heroin to Tyler Somas?11 A It was his mother's house on 108th Street in
12 Richmond Hill. It was the early part of the fall of 1970.13 Q When was the time that Mr. Breene delivered
14 one pound of heroin to Tyler?15 THE COURT: You are asking her the place or the
16 time or the occasion?

17 MR. WEINTRAUB: The time, the date.

18 THE COURT: The date, if you can't give it by
19 month and day of the month, try to give it with
20 reference to an event.21 THE WITNESS: It was just before I had my last
22 baby, and he was born on September 11, 1971.23 Frank brought the pound up to East 33rd and
24 Third Avenue apartment. It was in the month of August.

25 BY MR. WEINTRAUB:

Q Of 1971?

[173]

(The jury entered the courtroom at 2:01 p.m.)

DIRECT EXAMINATION

BY MR. WEINTRAUB (continued):

THE COURT: Please continue, Mr. Weintraub.

MR. WEINTRAUB: Thank you, your Honor.

Q Mrs. Somas, I believe you said before lunch that there were three separate occasions when you were present when Mr. Breene delivered heroin to Tyler Somas?

A Yes.

Q And the last of those occasions was a one-pound package?

A Yes.

Q Is that your understanding?

A Yes.

Q How long did that one-pound package last?

How long did it take Tyler to sell that package?

A Your Honor, I made a mistake. Mr. Breene did not deliver it in August. It was the first part of the summer. They started to run out the last part of August or the first of September. By the end of September, the pound was gone. By the end of September, the pound was gone.

Q So the pound was delivered the beginning of the summer?

A Right.

Q And it did not run out until the end of

2

Somas-direct

September?

A Right.

Q 1971?

A Yes.

Q Did Tyler Somas continue to deal in heroin after that pound ran out?

A No.

Q Now, during the period of March of 1970 through the beginning of the summer of 1971, about how often did you see Mr. Breene?

Can you give us an estimate?

Give us your best recollection.

How many times?

A I would say at least twice a week.

Q At least twice a week?

A Yes.

Sometimes less and sometimes more.

Q Excluding the three times when you actually saw the heroin change hands between Mr. Breene and Mr. Somas, how many occasions did Mr. Breene come to the house carrying a brown paper bag?

Give us your best recollection.

A At least four other occasions.

Q Four other occasions?

3

Somas-direct

A Yes.

Q On those four occasions, to the best of your recollection, did Mr. Breene have that brown paper bag when he left the premises?

A It wasn't always in a brown paper bag. A little bag, like from a candy store. It was either in his coat or shirt or pants pocket, but on four other occasions, I saw Tyler take out a scale to weigh the heroin.

Q So you didn't actually see the heroin change hands, but you saw Tyler take out the heroin when Breene was there?

A Tyler did not have heroin until Breene arrived.

Q Did he have heroin after Mr. Breene left?

A Yes.

Q Excluding the three occasions when you actually saw heroin change hands and the four occasions where Tyler did not have heroin before Mr. Breene came, but had it after Mr. Breene left, on how many occasions, other occasions, during that time period were you present when there was a discussion of narcotics trafficking between Tyler Somas and Frank Breene?

A I don't recall the exact number. Definitely, I can say three times for Somas to bring it, and they would discuss heroin or cocaine.

1
4

Somas-direct

2 Q Mrs. Somas, have you ever met a man named John
3 Indiviglio?

4 A Yes.

5 Q When for the first time did you meet Mr.
6 Indiviglio?

7 A The middle of the summer in 1971. The last time
8 I saw him -- no, wait a minute.

9 It was late spring, early summer of 1971. The
10 two occasions were closely together.

11 Q Do you see Mr. Indiviglio in the court today?

12 A Yes, Mr. Indiviglio is sitting at the end of the
13 table.

14 Q Can you say what he is wearing?

15 A A yellow shirt and a plaid suit and a blue
16 checkered tie.

17 MR. ABRUZZO: it is conceded.

18 THE COURT: Let the record show that the witness
19 identified John Indiviglio.

20 Q Where was it that you met Mr. Indiviglio for the
21 first time?

22 A The first time was outside his house on Long
23 Island. I am not familiar, very familiar with Long Island.

24 Q What kind of a house was it?

25 A It was a split level.

5

Somas-direct

Q Was there any fence outside that you can recall?

A There is no fence in the front yard, but from the dining room on back, there is a fence, and I believe it was a wooden fence. I am not too sure of that.

Q Did you have any discussion with Mr. Indiviglio the first time you met him?

A No. I was told to wait in the car, and Mr. Indiviglio and Tyler came out to the car when they finished their visit and Tyler introduced me to John.

Q When was the next time you were out to Mr. Indiviglio's house?

A Two to three weeks later.

Q This is still the summer of 1971?

A Early part of the summer of 1971.

Q Did you go into the house on that occasion?

A Again, Mr. Somas told me to wait in the car, but he went up to the door and Phyllis, John's wife, answered the door and motioned me to come in. I was pregnant and it was hot and they motioned me to come in and I went in with my son, Michael.

Q How long did you remain in the house?

A I would say about two to two and a half hours.

Q Did any discussion take place between Tyler

Somas-direct

Somas and Mr. Indiviglio in your presence on that occasion?

A Tyler was concerned about his health.

We sat down in the living room.

John offered us a drink. They started discussing the old days, about John and his brother and the discussion led to Tommy Matteo.

Q Can you tell us, to the best of your recollection, who said what in that discussion about Tommy Matteo?

A I cannot really remember who started the discussion about Tommy, but I do know that Tyler said that Tommy was doing well, then, and that perhaps Tommy should help John.

Q Did John say anything, did Mr. Indiviglio say anything?

A I remember John saying that he helped Tommy out a lot during his trial, as far as bail money and lawyers' fees were concerned, and he never got any of the money in return.

Q Was there any mention about what Tommy was doing well in?

A No.

Q They just said that he was doing well?

A Yes.

Q Was there any other discussion at that time?

Somas-direct

MR. KRIEGER: May we have it made clear as to who was present at that time?

MR. WEINTRAUB: I think the testimony shows clearly --

THE COURT: Do not edit the testimony.

MR. WEINTRAUB: All right.

BY MR. WEINTRAUB:

Q Who was present in Mr. Indiviglio's house when this discussion was taking place?

A Mr. Indiviglio, his wife was in the living room for a portion of the time, but she left, my son, Michael, and myself and Mr. Somas.

THE COURT: When you give your testimony, I am more interested that you face the jury, because I am interested in knowing that they hear.

BY MR. WEINTRAUB:

Q How old is your son that was present?

A He was almost four.

Q At that time?

A Yes.

Q Was there any further discussion, after discussing the fact that Tommy Matteo was doing well?

A We discussed the fact that John was, had something to do with Italian Reform Church and he performed the

1
2 8 Somas-direct
3 rite of marriage.

4 I was pregnant and Tyler and I were not married
5 and we were discussing getting married.

6 Tyler didn't want to, because he would have to
7 have a blood test, and he brought up the fact that John
8 could marry us legally.

9 Q Was there any discussion of narcotics at that
10 time?

11 A We didn't actually bring out the words heroin or
12 drugs. They were discussing about the money that John had
13 made.

14 Q What was said?

15 A John said he made millions.

16 Q Who had asked him?

17 A Tyler did.

18 Q Do you remember the words that Tyler used?

19 A I believe he just asked, approximately how much
20 did he make during the years, and John replied, millions.

21 Q Was there any other discussion after that?

22 A They discussed a foreign car that John was
23 importing into the United States.

24 Q What was said about that car, that foreign car?

25 A Tyler asked if he still had any left and John
said yes, he had one.

9

F. Somas-direct

Q Anything else?

A That was all.

Q Any mention of importing the car?

A Well --

Q Importing cars in general from Europe?

A Tyler was in sports car business and they were discussing the car, and I remember John said that it was a good little car, but the reason that they didn't, they were importing the car into --

MR. KRIEGER: I object to that, your Honor.

THE COURT: Just give us the conversation and not your reason.

Just try to tell us what was said.

BY MR. WEINTRAUB:

Q Did Mr. Indiviglio say why he was importing cars into the United States?

A No, he didn't come right out and say why.

Q He didn't?

A No.

Q Did you tell me in my office on Sunday --

MR. KRIEGER: Objected to your Honor.

THE COURT: The jury may be excused.

(At 2:15 p.m., the jury withdrew from the courtroom and the following occurred out of hearing

1 10 F. Somas-direct

2 of the jury)

3 THE COURT: All right, now ask the witness your
4 question, Mr. Weintraub.

5 BY MR. WEINTRAUB:

6 Q Did you tell me in my office Sunday, no less
7 than four times, that John Indiviglio told you on that
8 occasion that he was importing heroin into the United States
9 in cars imported from Europe?

10 A They were discussing drugs.

11 Q Did you tell me that on Sunday, no less than
12 four times?

13 A Yes.

14 Q Did I ask you if you were certain about that,
15 because Tyler did not remember it?

16 A Yes, I was.

17 Q Are you certain about it now? Is it true?

18 A Yes, I am.

19 THE COURT: All right, seat the jury.

20 MR. KRIEGER: May my exception be noted?

21 THE COURT: On what grounds?

22 MR. KRIEGER: I think the colloquy between the
23 witness and the prosecutor was prejudicial and I
24 move for the withdrawal of a juror and the declaration
25 of a mistrial.

11

F. Somas-direct

THE COURT: Why is it prejudicial? Because it hurts the defendant?

MR. KRIEGER: I think any sort of a veracity match as between a prosecutor and a prosecutorial witness has to redound to the defendant.

The inference is that in some fashion, that some defendant was able to reach this witness, so that she suddenly did not give the answer that the prosecutor sought.

THE COURT: Your imagination is running away with you, Mr. Krieger. I cannot see any such inference to be drawn by the jury at all.

I think the examiner has the right to nudge and stimulate the recollection of a witness, and because I didn't know what the answer would have been, I thought it best that the jury be excused, because if she said no, then I don't think the jury should have had the question, you see.

But I am convinced that the witness's recollection has been refreshed.

Please seat the jury.

(The jury entered the courtroom at 2:18 p.m.)

CONTINUED DIRECT EXAMINATION

BY MR. WEINTRAUB:

Q Now, Mrs. Somas, I ask you again, was there any

1 [183a]

2 11a

F. Somas-direct

3 discussion in Mr. Indiviglio's home concerning the reason that
4 Mr. Indiviglio was importing cars into the United States?

5 A It was because of drugs.

6 (continued on following page)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 1
[184]

Somas-direct

A45

2 Q Who said that?

3 A Mr. Indiviglia.

4 Q Did Mr. Indiviglia say that he was importing
5 drugs into the United States in foreign automobiles?

6 MR. KRIEGER: Objection.

7 THE COURT: Overruled, I will allow it.

8 THE WITNESS: Your Honor, may I have a chance
9 to explain?

10 THE COURT: Can you answer that question?

11 THE WITNESS: Tyler asked --

12 THE COURT: Please rephrase the question and
13 ask the witness what the question was with reference
14 to importation of cars.

15 Q Tell us to the best of your recollection what
16 Tyler said and what Mr. Indiviglia said.

17 A Tyler asked how he was getting it into the
18 country, and it refers to heroin because that was the subject
19 they were discussing at that particular time; and Mr. Indiviglia
20 said, the cars.

21 Tyler asked if he had any more left and John said,
22 one.

23 Q And did that discussion take place immediately
24 after the discussion of how much money John had made?

25 A Yes.

[187]

Q Now, while your husband was engaged as a substantial narcotics pusher, did you get any of that money?

A I stole from him, yes.

Q How much money did you steal from your husband?

A Approximately \$2,000.

Q And were you married to him at the time?

A No.

Q Did you ever return the \$2,000?

A No.

Q While your husband was dealing in narcotics did he ever give you any?

A Very little or else I wouldn't have stolen from him.

THE COURT: Ever give you any what? Money or narcotics?

MR. KRIEGER: Narcotics.

THE COURT: Is that what you understood it to mean?

THE WITNESS: I thought it was money.

Q While your husband was dealing in narcotics did you ever obtain any from him?

A Narcotics, no.

Q During that period of time were you using narcotics?

[188]

F. Somas-cross

A47

1
2 A Yes.

3 Q Were you smoking marijuana?

4 A Yes.

5 Q Were you sniffing cocaine?

6 A Yes.

7 Q Were you injecting yourself with heroin?

8 A No.

9 Q Have you ever used heroin?

10 A Yes.

11 Q Were you using heroin in 1970?

12 A Yes, I was.

13 Q Were you using heroin in 1971?

14 A No, I was not.

15 Q When was the last time you used heroin?

16 A I quit when -- in December of 1970.

17 Q And have you ever used heroin since December of
18 1970?

19 A No, I have not.

20 Q Have you ever sniffed cocaine?

21 A Yes, I have.

22 Q When did you begin sniffing cocaine?

23 A When I was 17.

24 Q And when if ever have you stopped sniffing
25 cocaine?

1 [218]
2 A No, we had a drink and we talked.

3 Q You had a chat?

4 A Yes.

5 Q Was Mrs. Indiviglio there?

6 A She was there. She had a wisdom tooth taken out,
7 and had bruises on her cheeks. John said, "I hope you don't
8 think I beat my wife."

9 She said, "I had my teeth taken out."

10 A lot of times they get bruises on the face.

11 Q Just the three of you sat around and had a drink?
12 Mrs. Indiviglio left?

13 A Yes. I was the only one doing any drinking. I
14 think Tyler had ice tea.

15 Q And this conversation took place that you testi-
16 fied about?

17 A Yes.

18 Q This was the second time that you had met Mr.
19 Indiviglio, right?

20 A Yes.

21 Q You never met him before?

22 A No.

23 MR. WEINTRAUB: Objection.

24 Q After?

25 A No.

2 Q After you came into the house and you sat around,
3 Mr. Indiviglio and Tyler talked about importing heroin in cars?

4 A Not right away.

5 Q They led up to this? First they talked about the
6 old days?

7 A John having a supermarket, and how much money he
8 lost, and how everybody used to steal from him.

9 Q He owned a supermarket and lost money?

10 A Yes.

11 Q And owned Certified Autos where Tyler --

12 A I don't remember Certified Auto.

13 Q What were these old times they were talking about,
14 besides the supermarket and the money he lost?

15 A John discussed things about his brother. Talked
16 about Tommy -- all the money John gave to Tommy for Tommy's case.

17 Q In the course of this conversation in your pres-
18 ence, they had a discussion about importing heroin, that is your
19 testimony?

20 A They talked about the cars.

21 Q The cars.

22 Did they ever mention importing heroin?

23 A John mentioned drugs.

24 Q Did he ever mention importing drugs.

25 A Yes.

1 [220]
2 Q In these cars?

3 A That's what he was using the cars for.

4 Q How many cars did he have? How many foreign cars
5 did you see there?

6 A I only saw one. One little white one.

7 Q How old was it?

8 A How old?

9 Q Yes.

10 A A relatively new car.

11 Q Two or three years old?

12 A Approximately. I don't know about cars.

13 Q Did they discuss when John had last been to
14 Europe to bring one of these cars in?

15 A No, they didn't.

16 Q All this is in your presence?

17 A Yes.

18 Q In the presence of a person Mr. Indiviglio met
19 for the first time?

20 A Yes.

21 Q He had no qualms about discussing the importation
22 of drugs in your presence?

23 MR. WEINTRAUB: Objection.

24 THE COURT: Objection sustained, it is argumenta-
25 tive.

1 [221]

Somas - cross/Abruzzo

A51

2 MR. ABRUZZO: Withdrawn.

3 Q Mrs. Somas, did you ever see Mr. Indiviglio again
4 after that?

5 A (No response.)

6 Q Until today?

7 A I saw him in -- Tyler and I saw him. He had an
8 apartment close to the city. The houses were all like stuck
9 together.

10 Q When was that?

11 A For a short time.

12 Q When was that?

13 A Close to the birth of my baby, which was in
14 September.

15 Q Of the same year, 1971?

16 A Yes.

17 Q I believe it was your testimony that you appeared
18 before a Grand Jury in Suffolk County in March of this year,
19 is that correct?

20 A March, '73.

21 Q Was your testimony in that Grand Jury in any way
22 involved with Mr. Indiviglio?

23 A What?

24 Q Was your testimony in that Grand Jury proceeding
25 in any way involved with Mr. Indiviglio?

1 [222] A No, it wasn't.

2 Q Now, after you went to Mr. Indiviglio's house in
3 the summer or spring of '71, did you report this incident to
4 any authority?
5

6 A No.

7 Q Did you call up the United States Attorney and
8 tell him about it?

9 A No, I didn't.

10 Q When did you first tell him?

11 A Sunday.

12 Q Sunday?

13 A Yes.

14 Q Did you tell any of the Agents about this incident?

15 A No.

16 Q So, for the first time in all of these weekly
17 conferences with these Agents, you revealed this story Sunday?

18 A Yes.

19 Q Is that your testimony?

20 A Yes.

21 Q Would your testimony be the same if I told you
22 when your husband testified earlier today, he said you never
23 went into the house?

24 A I wouldn't believe you, because I went in the
25 house.

EXCERPTS FROM THE TESTIMONY OF FRANK AGUIAR

[A54 through A60 following]

1 3
[236]

Aguilar - direct

A54

2 Q From whom did you receive it?

3 A I received it from Tyler Somas for a while and
4 afterwards someone else.

5 Q During the spring and summer of 1968, did you
6 have any contact with a man named James McCormick?

7 A Yes.

8 Q How did you meet him?

9 A I met him through my brother-in-law but I had
10 known him for a while before that anyway, you know, through
11 the neighborhood.

12 Q What was Mr. McCormick doing for a living at
13 that time, do you know?

14 A He was in the heroin business.

15 Q Did he tell you that?

16 A I cut some material in his apartment for him.
17 It was his material.

18 Q What do you mean by material?

19 A Heroin. I cut it down.

20 Q Did he tell you where he got that heroin
21 from?

22 A Yes.

23 Q What did he say?

24 A From Indiviglio, Charles Indiviglio.

25 Q What color was that?

1 5
[238]

Aguilar - direct

A55

2 BY MR. WEINTRAUB:

3 Q Would you state whether or not Mr. McCormick
4 gave any indication why the heroin was brown?

5 A It was spoiled in shipment and in being treated.
6 At that time there were a few known dealers in the neighborhood
7 and he was one of them. His merchandise fluctuated with each
8 shipment and that was due to heroin which was spoiled.

9 Q Did he state who was treating the heroin?

10 A Charles Indiviglio.

11 Q You stated that after this, after the spring
12 of 1968, you continued dealing with MR. Somas, buying heroin
13 from him; is that correct?

14 A Yes. There came a point where another person
15 was brought into the picture.

16 Q No, I am just limiting yourself now to dealing
17 with Mr. Somas.

18 A Yes.

19 Q What quantities were you buying from Mr. Somas
20 at that time?

21 A Eighths. One-eighth of a key.

22 Q Is that a kilogram?

23 A Yes, four and a quarter ounces.

24 Q You say there was another point in time when
25 another individual became involved?

[255]

Aguilar-direct

One was when he borrowed some money off me. Another time it was to talk to me about Matteo and him broke up, and that his part of the \$8,000 wasn't his responsibility, it was Matteo, because him and Matteo terminated their partnership.

Q Did you continue to deal with Matteo after that?

A Then it was Matteo, yes.

Q How often were you buying from Mr. Matteo?

A I would say maybe about three or four times. I had purchased something else from somebody else, that's why I didn't go to him.

Q Did there come a time you went into partnership with Mr. Matteo?

A When did --

Q Did there come a time when you did?

A Yes.

Q When was that?

A The partnership between me and Matteo was roughly around the summer of 1970, to my recollection.

Q What was the arrangement?

A We were to put up 33,000 apiece. That is \$33,000 apiece.

Q Yes?

1 [320]
2 Q This was a luncheonette. Did you have anything
3 to eat?

4 A We might have and we might not have. I had a
5 few meetings with people in there.

6 Q Did you give Mr. Breene your telephone number?

7 A As far as I recall, yes.

8 Q What was the phone number?

9 A I don't remember right now.

10 Q Well, that's 1969.

11 And did you ever purchase any contraband or
12 narcotics from Mr. Breene?

13 A Yes, I did.

14 Q When was the first time you bought narcotics
15 from Mr. Breene?

16 A In the Fall of 1969.

17 Q Was that before or after this meeting in
18 Connie's?

19 A It was after.

20 Q How long after?

21 A Offhand, I couldn't say, I'd say maybe a week,
22 two weeks.

23 Q Where did you buy it?

24 A I met him somewhere along Jamaica Avenue in his
25 car on the first one and --

subject to paying taxes?

A Paying, yes.

Q And interest and penalties to the United States on the money you made?

A That is right.

Q Mr. Krieger read to you a question and answer that you made in a prior proceeding when you stated that Mr. Breene was out after November of 1969; do you recall that?

A Yes.

Q What did you mean when you made the statement?

MR. KRIEGER: Objected to.

THE COURT: Overruled, I will allow any witness to explain the meaning of any terminology he uses.

A I stated that he was out but -- the thing was this, they formed their partnership, I could have been the fourth partner. The partnership was Thomas Matteo, Frank Breene, an unknown and I was supposed to be the fourth, and I turned that agreement down. All I said is that I wanted the material the same way they got it and at the same price.

Now, it was terminated but not just one, two, three. I had seen Breene going into the 70's and all this as far as I knew, they were acting -- they didn't break their partnership in November, it brought to light when I met Breene on a couple of occasions, on occasions --

Aguiar-recross

over with.

MR. KRIEGER: I accept your Honor's ruling.

Q And you, sir, were those questions put to you and did you make those answers?

A Yes.

MR. KRIEGER: I have no further questions.

THE COURT: Any questions, Mr. Abruzzo?

RE CROSS EXAMINATION

BY MR. ABRUZZO:

Q Mr. Aguiar, I believe it was your testimony that you had a meeting with Mr. Breene and Mr. Mattio about forming a partnership; is that right?

MR. WEINTRAUB: Your Honor, I'm going to object, it was not covered in --

THE COURT: Go ahead.

A Yes.

THE COURT: They are not bound by your redirect. You may open up the entire cross by redirect, Mr. Weintraub.

Go ahead, Mr. Abruzzo.

MR. WEINTRAUB: Yes, sir.

BY MR. ABRUZZO:

Q You said that this partnership was going to be yourself, Breene and Mattio and an unknown. Then you later

Aguilar-recross

7 testified, I believe, that you met a person by the name of
Mike whose name was unknown. Was he the fourth partner?

A Not that I know of.

Q How about Metro?

A He could have been at that time, I don't know.

MR. ABRUZZO: Thank you.

I have no other questions.

THE COURT: Anything further?

MR. WEINTRAUB: Nothing further, your Honor.

THE COURT: You may step down.

Thank you.

(The witness was excused.)

THE COURT: Next witness.

We will have a short recess, we will have a
short recess.

(The jury then left the courtroom.)

THE CLERK: Two-page report dated October 7,
1972 marked as Government's Exhibit 36 for identifica-
tion.

Two-page report dated September 29, 1972 marked
Government's Exhibit 37 for identification.

THE COURT: Who is the next witness?

MR. WEINTRAUB: Police officers, your Honor.

THE COURT: I think you should know,

1 safeguards as your Honor has previously indicated.

2 MR. ABRUZZO: I have an application, too.

3 I move that this Court not allow the evidence
4 into evidence at all on the grounds of relevance to this
5 action. What testimony have we had in this trial that
6 in any way indicates that that paraphernalia here is
7 that paraphernalia that was testified to by Mr. Tyler
8 Somas the first day of this trial, or that it is in any
9 way connected with the Conspiracy here?

10 THE COURT: I heard Sergeant Thomsem say that he
11 looked at the equipment, and in his opinion as an expert
12 in narcotics, he has an opinion that this is equipment
13 for testing the melting point of heroin.

14 MR. ABRUZZO: What relationship does that equip-
15 ment have to the Conspiracy?

16 THE COURT: If someone has equipment that is used
17 in the heroin business, then the jury ought to know about
18 it. Maybe he was using it in this Conspiracy.

19 MR. ABRUZZO: That has nothing to do with the
20 charge before the Court.

21 If there were some connection between this equip-
22 ment and any of the testimony in this trial regarding
23 my client, then I would see its being used, but there
24 is no testimony except the testimony of Mr. Somas, who
25 says he observed similar type of equipment in an apart-

1 ment in Queens.

2 THE COURT: Let me put it this way:

3 Suppose they seized a kilo of heroin, would that
4 be admissible?

5 MR. ABRUZZO: In the house, I think so.

6 THE COURT: The heroin was just a product in the
7 Conspiracy. Instead of the product, the Government
8 claims what they have is the equipment for testing
9 heroin, or whatever it is used for.

10 Is it used for diluting the heroin?

11 MR. WEINTRAUB: For testing to determine purity.

12 THE COURT: For purity.

13 MR. ABRUZZO: They have tested this equipment.
14 It has a variety of other uses.

15 THE COURT: Of course you could always explain
16 that.

17 MR. ABRUZZO: They found no heroin at all con-
18 nected with this equipment.

19 THE COURT: No trace of heroin?

20 MR. ABRUZZO: I have the Lab Reports here.

21 THE COURT: All right.

22 MR. ABRUZZO: It would appear to me that the
23 introduction of this, coupled with the testimony of Mr.
24 Somas earlier, talking about unrelated events, has got
25 to prejudice the jury, it has got to make them think this

[357]

1 was the same lab that Tyler Somas told us about.

2 THE COURT: You will have to examine and make
3 sure that they understand it is not, and I do not know
4 it is not. The point is, if this equipment is generally
5 used by a narcotics dealer, I should allow it as I allow
6 scales and measuring spoons, and everything else. It
7 does not have to show the heroin. I would say that
8 that is a damned good argument, that there is no trace
9 of it on there. That's a pretty clean factory, if he
10 could use it for melting heroin, and still not have a
11 trace of it. Maybe the experts can explain why there
12 wouldn't be. I do not know, but it is admissible. I
13 think its weight is questionable, and you have a right
14 to argue that to the jury, everything that you have said.

15 If the Government represents that an expert -- I
16 think the representation was made by Sergeant Thomsem --
17 that this is the equipment generally used to test heroin,
18 and that was the equipment found in Mr. Indiviglio's
19 bedroom, I think the jury may infer --

20 MR. ABRUZZO: How can we have a Conspiracy from
21 a lot of hearsay? We have the hearsay testimony from a
22 guy that said somebody told him something, and we have
23 the testimony of Tyler Somas --

24 THE COURT: You don't have anything else?

25 I thought I heard Mrs. Somas testify.

EXCERPTS FROM THE TESTIMONY OF JOSEPH THOMPSON

[A65 through A78 following]

[396]

CROSS-EXAMINATION

BY MR. ABRUZZO:

Q Officer, when you discovered these chemical apparatus here and these letters and things, did you have them tested by the lab, the apparatus by your chemistry lab, your police laboratory?

A I believe some of it was, sir, I don't recall -- not this particular equipment.

Q Let me show you these test reports from the Suffolk County Police Department and let me ask you if that refreshes your recollection.

A Yes, that is some of the stuff.

Q That is some of the stuff?

THE COURT: Is this the "stuff"?

THE WITNESS: No, sir, I don't believe it was, sir.

Q Did you --

THE COURT: By "this stuff," for the record I'd like you to say it is Exhibit 38, then 40 --

THE CLERK: 38, 40, 41, 42, 43, 44 and 45, and that is it.

THE WITNESS: Could I check it?

THE COURT: Yes.

THE WITNESS: It would have to have the laboratory

initials.

(At this point the witness descended from the witness chair and approached the exhibits.)

(There was some conversing between Mr. ABRuzzo and the witness.)

THE COURT: No private discussion.

THE WITNESS: These I put aside right now have the laboratory technician's initials on them (indicating).

MR. ABRUZZO: How about this (indicating)?

THE COURT: What exhibit do you say they were?

THE CLERK: 45.

THE COURT: 45?

THE WITNESS: In 45, right, your Honor.

THE COURT: All right.

MR. WEINTRAUB: May we have a clarification?

Is that all the items in Exhibit 45?

THE WITNESS: No, no, just the items which I have moved aside here.

THE COURT: Then describe them, please, so we know which items they are.

THE WITNESS: One face mask, filter mask (indicating).

One small laboratory beaker (indicating).

1 [398]

Thompson-cross

A67

2 One large laboratory beaker (indicating).

3 One paring knife (indicating).

4 Two test tubes (indicating).

5 Two black stoppers and this holder (indicating).

6 This one (indicating).

7 THE COURT: Describe it for the record, when you
8 say "this one."

9 Are they measuring glasses?

10 THE WITNESS: Three measuring glasses that can
11 be identified by the initials, C.K., Charles Kuziak.

12 (At this point the witness resumed the witness
13 chair.)

14 BY MR. ABRUZZO:

15 Q Officer, those tests, did they reveal the
16 presence of any dangerous drug?

17 A No, sir, they didn't.

18 Q Now I believe it was your testimony that this
19 face mask or one like this is commonly used to filter heroin
20 from coming into the user's face so he doesn't become addicted.

21 A Yes, sir.

22 Q And there was no trace of any heroin on that
23 face mask?

24 A No, sir.

25 Q Now, Officer, in the course of your work, is it

[399]

common to use inaccurate scales of this type (indicating)?

MR. WEINTRAUB: Object to the characterization.

THE COURT: Sustained.

MR. ABRUZZO: I'm sorry.

Q In the course of your work, Officer, is a scale of this type, is it commonly used in the weighing of narcotics (indicating)?

A No, no, sir.

Q Can you tell us why that type of scale isn't commonly used?

A It is not calibrated sufficiently for accuracy, sir.

Q How about this one (indicating)?

A Yes, sir, it is.

Q This, a postage scale?

A Yes, sir.

Q To weigh large amounts?

A No, sir.

Q How about this heating lamp, is this the kind of lamp that is commonly used?

A It can be used.

Q Can be?

A Yes, sir.

Q But it is not what is commonly used, they

6 usually use some kind of heat.

3 A It is not in common usage, they usually --

4 Q So these aren't common devices?

5 A They can use anything.

6 Q They can use anything, but these have other
7 uses, obviously?

8 A Certainly.

9 Q And obviously this can run a kid's toy to make
10 it smoke (indicating mineral oil)?

11 A Yes, sir.

12 Q And is this an instrument for which a man of the
13 age of Mr. Indiviglio might use to heat his back?

14 A Yes, sir.

15 Q I don't think it is uncommon for a person to
16 have a Bunsen burner in his house that lives in Long Island;
17 right?

18 A No, sir, it is not uncommon.

19 MR. WEINTRAUB: Objection.

20 THE COURT: I will allow it.

21 MR. WEINTRAUB: It is speculation.

22 BY MR. ABRUZZO:

23 Q Now, Officer, you said that you found some
24 other items in this house?

25 A Yes, sir.

7

1 [401]
2 Thompson-cross
3 Q The drug or the chemical things that you found
4 there, were they in regular labeled bottles?

5 A Yes, sir.

6 Q Which you could buy in any store?

7 A I don't know if you could buy all of them in any
8 store.

9 Q You can buy them in a chemical supply house?

10 A Yes.

11 Q You don't need a prescription for it, there is
12 nothing illegal about owning them, is there?

13 A Not to my knowledge, sir.

14 Q No.

15 And you found a big jar of white powder?

16 A I believe it was a bag, sir.

17 Q A big.

18 When you had that tested, what did it turn out
19 to be?

20 A Pool chemicals.

21 Q Carbonic, right?

22 A Yes.

23 Q You then had another test and the white substance
24 that was on the 600 ml flask and the face mask turned out to
25 be soap, didn't it?

A I don't recall, I think it was soap, sir,

something like that.

Q You can look at these, these are your reports.

Now, you had been there, there was a lot of talk here, Mr. Weintraub asked you a lot of questions or read from these letters about cars.

Were you at the scene when this shooting took place?

A No, sir.

Q You weren't there?

A No.

Q Well, in the course of your investigation was your department, Drug Department, interested in this case?

Did you take up an investigation of this case from the drug aspect?

A Yes, sir.

Q You yourself?

A Yes, sir.

(Continued next page.)

Q And were you told at the scene of the crime there was a foreign car taken from Mrs. Indiviglio?

Here, look at this.

A Taken from?

I don't understand the question.

Q Wasn't a foreign car taken, along with the car that belonged to Mr. Matteo?

A Yes.

Q Those cars were tested for drugs.

Here, read it.

A I know that.

Q And there was no trace of drugs; is that correct?
MR. WEINTRAUB: Objection, unless he knows, your Honor.

THE COURT: Overruled.

I will allow it if you can answer it.

A The only evidence of a trace of drugs was through--

Q I didn't ask you that.

THE COURT: Just answer the question the way he asked it.

Q When they look at this car (indicating), this white foreign car, and in fact Mr. Matteo's car, was there any report of drugs found?

A No, sir.

Q Okay.

And then they brought dogs there from the Customs Department, didn't they?

A Yes, sir.

Q And they were sniffing, no heroin, right?

A Yes, sir.

Q And they didn't find any; is that correct?

A No.

THE COURT: Is that correct?

THE WITNESS: No, sir, it is not correct.

THE COURT: It is not correct!

Q They found heroin?

A The dogs found a scent of heroin, that is what you asked me, sir, they found a scent of heroin in the left front door of Mr. Matteo's car.

Q Mr. Matteo's car?

A Yes.

Q I'm asking you about the house.

A You asked me about the both cars.

Q I asked you about the house.

A Not in the house, no, sir.

Q I don't care about Mr. Matteo's car.

How about this report --

THE COURT: Strike out, "I don't care about Mr.

Matteo's car."

Q Why didn't they say that on that report, Officer;
do you know?

A No, sir.

Q You don't?

A It's not my report.

Q It does say that the dog's search was negative.

MR. WEINTRAUB: I object, it is not his report,
it is not proper cross-examination.

THE COURT: I will permit him to answer whether
he knows if the report -- if there is any question that
that is an official report of the Suffolk County Police
Department.

MR. WEINTRAUB: There is no question about that.

THE COURT: All right, all right.

Use it.

BY MR. ABRUZZO:

Q Now, Officer, you heard Mr. Weintraub read all
of these letters about these foreign cars?

A Yes, sir.

Q When you found these records, did it raise your
curiosity as to what this SCI Indivol in France was all about?

A Yes, sir.

Q You thought it had something to do with a French

1 [412]

Thompson--recross/Abruzzo

A75

2 MR. ABRUZZO: Yes, sir.

3 May I see that Exhibit?

4 (Mr. Weintraub handed Exhibit 51 to Mr. Abruzzo.)

5 RECROSS EXAMINATION

6 BY MR. ABRUZZO:

7 Q Officer, this scale here (indicating) that you
8 were shown by Mr. Weintraub, this two-pound scale, did it have
9 any certificate of the Weights and Measures on it?

10 A Not that I saw, no.

11 Q Did you make any inquiry as to where that scale
12 came from?

13 A No, sir.

14 Q Did you know that at that time Mr. Indiviglio
15 owned a supermarket?

16 A Not --

17 THE COURT: Overruled.

18 I will allow it.

19 A Not at that time, sir, I do now.

20 Q You know now?

21 A Yes, sir.

22 Q Is that the common type of scale used in a super-
23 market?

24 A Yes, sir.

25 MR. ABRUZZO: I have no further questions.

THE COURT: Anything further?

2 THE COURT: Suppose you underline the word
3 "dresses" on the document that you find it in. That
4 is Exhibit 52?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Go through the others.

7 THE WITNESS: I don't see it again. It appears
8 like it is only here.

9 BY MR. ABRUZZO:

10 Q It is only mentioned one time in all that
11 correspondence; isn't that correct?

12 A Yes, sir.

13 Q Detective, do you know if Mr. Indiviglio is
14 married?

15 A Yes, I do.

16 Q Do you know if his wife wears dresses?

17 MR. WEINTRAUB: Objection.

18 THE COURT: Is there an objection to that?

19 MR. WEINTRAUB: No, your Honor.

20 THE COURT: All right, you can answer that.

21 THE WITNESS: I don't know, sir.

22 Q Now, Officer, when you read --

23 THE COURT: What is your best guess?

24 THE WITNESS: Probably.

25 Q I believe you told us yesterday you made no

1 14
[456]

Thompson - cross/Abruzzo

A77

2 investigation of what the business was in France?

3 A NO, sir.

4 Q You didn't notify Interpol about these letters
5 or the French police?

6 A I did not but I have knowledge that they were,
7 yes, sir.

8 Q Did you get a report from the French police as
9 to what this was?

10 A I didn't personally, no, sir.

11 Q Did someone in your department get a report
12 from the French police as to what this was?

13 A It wasn't the French police, it was one of
14 the Federal Agencies.

15 Q The Federal Agency has a report on what is
16 going on in this corporation in France?

17 A I have a report from one of the Federal Agency's
18 involved in the total investigation. Yes, sir.

19 Q You have never been to see that?

20 A That report?

21 Q Yes.

22 A No, sir.

23 Q Your experience in dealing in heroin and
24 narcotics matters, in your opinion, is it normal for
25 heroin importers or heroin sellers to mail each other formulas

Thompson - cross/Abruzzo

in the mail?

A I have never seen it done before, sir, from overseas. I have seen it done within the U. S.

Q But not from overseas?

A Never from overseas.

Q Because the mail from overseas is subject to some kind of scrutiny that isn't afforded the protection that we have here--

THE COURT: Is that true? Do you know that to be true?

THE WITNESS: No, sir, I didn't answer it, your Honor.

Q I am asking if you know?

A I don't know.

MR. ABRUZZO: I have no further questions.

THE COURT: Anything further?

MR. WEINTRAUB: May I have just one moment, your Honor?

THE COURT: Yes.

(continued next page.)

3am#2
HS/elc

1 MR. WEINTRAUB: Y our Honor, before --

2 THE COURT: After you have made your motions, we
3 will take up everything else that is outstanding.

4 MR. WEINTRAUB: Before motions are made, I would
5 have to respectfully withdraw part of an exhibit which
6 has been admitted into evidence, because I had prelimi-
7 narily been informed by telephone that a molar solution
8 of hydrochloric acid has a use in determining heroin --
9 heroin hydrochloride.

10 When the chemist examined the document this
11 morning, he said it was not sufficiently concentrated.
12 I think it would be of some probative value, but I would
13 rather withdraw the exhibit.

14 I will stipulate to the fact that he made the
15 statement to me if the defense desires it.

16 THE COURT: Did you read that to the jury?

17 MR. WEINTRAUB: Yes.

18 THE COURT: What shall I say to the jury?

19 MR. ABRUZZO: Only one thing you can say, that
20 they can't believe that statement and they have to
21 disregard it.

22 The Court had nothing to do with it.

23 MR. KRIEGER: That is not the only thing you can
24 do here.

1
2 I move for the withdrawal of a juror and a
3 declaration of a mistrial.

4 MR. ABRUZZO: I join in that motion.

5 THE COURT: That motion is denied.

6 I do not think it is prejudicial. I think an
7 instruction to the jury will withdraw any possible
8 prejudice to the defendants in the case.

9 MR. KRIEGER: At a future date, at a future time,
10 I do not want my application to be interpreted as pro
11 forma, because I did not set it out at length.

12 It is prejudicial to my client. I think under
13 the circumstances where this array of purported
14 contraband has been exhibited to this jury, and what
15 has transpired, is of marked prejudice to my client
16 and I respectfully renew my application.

17 THE COURT: We are talking about some document
18 that talks about some molar hydrochloric acid -- is
19 that what it is?

20 MR. WEINTRAUB: Molar solution.

21 THE COURT: What does it have to do with the
22 other exhibits?

23 There is testimony by an expert that this is
24 part of a heroin factory. Now we are talking about one
25 document. Do not try to confuse the jury in talking
about everything else in the case. Is there any

[474]

3 question about the good faith of the government --

MR. KRIEGER: Absolutely nothing.

THE COURT: There is an alternative. You could bring in the chemist and let him explain to the jury that this solution is not strong enough to do whatever you thought it was going to do.

MR. KRIEGER: In response to your Honor's query, although there is absolutely no question as to the good faith of the government, that is absolutely not the issue.

THE COURT: It has a lot to do with it.

If the government demonstrated bad faith, I would seriously entertain your application, but these things happen in the preparation of a complicated trial. An assistant gets word and is assured, and on closer examination the expert reverses himself. He comes forward and tells what happened. What do you do?

MR. KRIEGER: I am not intrigued with any subjective evaluation of prosecutorial or defense conduct. It is the objective result.

THE COURT: All right, we have your statement on the record. The motion is denied. I will instruct the jury that the document that was referred to --

MR. WFINTRAUB: One molar solution of hydrochloric acid.

EXCERPTS FROM THE TESTIMONY OF REV. LYNNWOOD T. DEANS

[A83 through A84 following]

1 5 Deans-direct

2 R E V. L Y N N W O O D T. D E A N S, called as a
3 witness on behalf of the defendants, having been first
4 duly sworn, assumed the witness stand and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. ABRUZZO:

8 Q Can you tell us what church you are affiliated
9 with?

10 A Trinity Baptist Church in Bayside.

11 Q Do you know John Indiviglio?

12 A Yes.

13 Q Do you know him as John or Charles?

14 A Charles.

15 Q When did you first meet Mr. Indiviglia?

16 A March of 1968.

17 Q In March of '68, what were the circumstances
18 of your meeting him, if you recall?

19 A To buy a piece of land located at 207-15 48th Ave.
20 in Bayside.

21 Q Was this property occupied by tenants at the
22 time you looked at it in March of '68?

23 A No. This was a vacant lot.

24 Q In the course of these negotiations, did you
25 rent any space from him while this lot was being purchased?

8

Deane-direct

that and the answer.

(The court reporter thereupon read as directed)

MR. WEINTRAUB: I object.

THE COURT: Sustained.

Strike it out. The jury will disregard it.

BY MR. ABRUZZO:

Q Did you do business with Mr. Indiviglia besides buying that lot?

A Other than paying rent for the house we rented to house our church.

Q In all your business dealings with him, you say that --

MR. WEINTRAUB: Objection.

THE COURT: Sustained. This is not character evidence. It is not reputation evidence.

BY MR. ABRUZZO:

Q Do you know his reputation in the community? In Bayside?

A All I know is honesty. That is his reputation.

Q In the community?

A Yes.

MR. ABRUZZO: No other questions.

CROSS-EXAMINATION

BY MR. WEINTRAUB:

Q When is it that you say you purchased this
SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

(The jury entered the jury box at 11:55 a.m.)

THE COURT: May I have the correct name of that corporation?

MR. WEINTRAUB: SCI Indivol -- I-n-d-i-v-o-l.

THE COURT: The Government read two letters that were marked in evidence that were part of Exhibit 49 and they referred to a molar solution of hydrochloric acid.

The Government states that one molar solution of hydrochloric acid is not used in processing heroin and has no business in this case.

So, to make certain you are not confused by it, those two letters were stricken from Exhibit 49 and you are to just disregard them entirely.

Now, some reference was made to SCI Indivol Corporation and the Government states that their investigations disclose that SCI Indivol Corporation is a legitimate French real estate corporation.

Is that satisfactory to the parties?

MR. ABRUZZO: Yes.

MR. WEINTRAUB: Yes, your Honor.

THE COURT: You may proceed, Mr. Abruzzo.

MR. ABRUZZO: I call Mrs. Indiviglio.

I will have to go out. I have no clerk here.

EXCERPTS FROM THE TESTIMONY OF LOUISE INDIVIGLIO

[A87 through A90 following]

5
[516]

L. Indiviglio-direct

A87

A Malba -- Malba Pharmacy.

Q Did they come a time when they vacated at the premises?

A Yes, they broke a lease.

Q I didn't ask you that -- just, did they leave the premises?

A Yes. I don't know what day that was.

Q But they left?

A They left.

Q When they left did they take everything they had in the place out?

A No, they left a big mess.

Q Did you have someone clean out the mess?

A I asked my husband to clean it out.

Q And did he?

A Yes.

Q I show you some of these items here -- test tubes and beakers and so forth --

A Those are things they would have.

Q Do you know for a fact if those were the type of things removed from that building?

A There were a lot of boxes. Everything came in boxes, you know.

THE COURT: Did you see the items at the drug

store?

THE WITNESS: I was always in there to collect rents and they had those kind of things there.

THE COURT: Was it like what Mr. Abruzzo showed you?

THE WITNESS: Yes.

Q How about this (indicating)?

A That belongs to my son, actually. He was studying chemistry.

Q At school?

A Yes.

Q And this was his (indicating)?

A Yes.

Q Mrs. Indiviglio, are you certain that at no time in that building on 215 Place that the downstairs apartment was ever used as a storage room?

A No, it was always rented.

Q You never recall it being used?

A No.

MR. ABRUZZO: Thank you.

I have no further questions.

THE COURT: Anything further?

MR. WEINTRAUB: Yes, your Honor.

(Continued on next page.)

[518]

CROSS-EXAMINATION

BY MR. WEINTRAUB:

Q Excuse me, ma'am. I didn't hear your full name. What is your first name?

A Louise.

Q Louise?

A Yes.

Q You are the wife of Mr. Indiviglio?

A Yes.

Q When were you married?

A In 1944.

Q 1944?

A Yes.

Q How old is your son?

A 19, going on 20.

Q 19?

A Yes.

Q And this stand over here belonged to your son?

A Yes.

Q What about the rest of the equipment? Did that belong to him -- this lab type equipment?

A He had a couple of things at home.

Q This flask?

A No, that was from the drug store.

1

Q From the drug store.

2

What about this --

3

A That's a heating lamp. It may have been ours.

4

It's a heating lamp.

5

Q Was it yours, do you remember?

6

A We had one like it.

7

Q What about the mineral oil?

8

A The what?

9

Q The mineral water, this bottle here, Government's

10

Exhibit 40 in Evidence.

11

Did you keep a bottle of mineral water in the house?

12

A Yes, everybody uses that.

13

Q Where would you keep it?

14

A In the bathroom.

15

Q Did you know whether you had any mineral oil

16

in other parts of the house besides the bathroom?

17

A Not that I know of, no.

18

Q You knew a man named Thomas Matteo?

19

A I met him. He used to work at the automobile

20

parts place.

21

Q When did you first meet him?

22

A When we had the store, the automobile store.

23

Q When -- around 1966?

24

A Around that time.

25

A91

EXCERPTS FROM THE TESTIMONY OF FRANCIS BREENE

[A92 through A98 following]

2 Breene - direct
the wife of Officer Schmidt?

A Right.

Q What's her first name?

A Gail.

Q Gail Schmidt.

Please continue.

A She discussed it with Jimmy and they decided to come in and pick me up. I said it was unnecessary, it would be easier if I just took the train and they picked me up at the station.

They said that they would come in. So I waited for them to come in.

Q Did you meet with them?

A Yes, I did.

Q And did you have anything to drink with them?

A Yes.

Q Were the three of you together at the bar?

A Yes.

Q And during the course of your drinking at the bar, did you have any conversation whatsoever with respect to John Indiviglio?

A None whatsoever.

Q Did you have any conversation whatsoever with respect to any monies as to John Indiviglio?

3

Braene - direct

A None whatsoever.

Q Did you have any discussion whatsoever as to an alleged \$90,000 being in the trunk of a car at the house of John Indiviglio?

A No, sir.

Q Did you have any discussion of any nature in any fashion with officer Schmidt with respect to narcotics, money, contraband or anything of that nature?

A NO.

Q Now, how long were you at the bar with Officer Schmidt?

A A few hours.

Q Were you drinking?

A Yes.

Q Was he drinking?

A Yes.

Q Was Mrs. Schmidt drinking?

A If I remember, yes.

Q What time did you leave the bar?

A Might have been 2 -- I remember it was about 2:00 because by the time we got to Long Island the bars on Long Island were closed and they close about 3:00.

Q Did you go directly from the New York bar to Northport?

Breene - direct

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q And did they drop you off anywhere?

A I spent the weekend at the home of the in-laws
-- they always spent the weekend there.

Q You all came home together?

A Right.

Q Now, I want to go back many years ago.

When did you first meet an individual by the
name of Tyler Somas?

A 1961, '62.

Q Where did you meet him?

A Well, we came from the same neighborhood,
Richmond Hill, Queens.

Q What were the circumstances surrounding that
initial meeting?

A I don't know. A bar perhaps, neighborhood bar.
I just don't remember.

Q Was he one of the fellows in the neighborhood?

A Yes.

Q And from 1961 down through the rest of the 60's
if you will, did you see him on occasion?

A Yes.

Q Did you socialize with him on occasion?

A On occasion.

1
5

Breene - direct

2 Q Would you drink with him?

3 A He wasn't much of a drinker but we had a few
4 drinks.5 Q Now, did you ever have any narcotics contact
6 whatever with Mr. Somas?

7 A No, sir.

8 Q Did you ever buy any narcotics from him?

9 A No.

10 Q Did you ever sell any narcotics to him?

11 A No.

12 Q Did you ever give him any narcotics to hold, to
13 store, to transport, to keep for you?

14 A No.

15 Q Did you ever discuss a connection with MR. Somas?

16 A In relation to what?

17 Q Narcotics.

18 A No, sir.

19 Q Relation to anything?

20 A Nothing to do with narcotics, no.

21 Q Are you of Irish descent, sir?

22 A Yes.

23 Q Do you know an individual by the name of Irish?

24 A A surname Irish?
25

10

Breene - direct

Q Now, did you ever engage in any business or any partnership or any agreement or arrangement with either Mr. Somas, Mrs. Somas, Mr. Aguiar, Mr. Indiviglio, Mr. McCormick Mr. Matteo or with any of the other people that have been mentioned in these past few days for the sale, distribution, storing, buying, selling or having anything to do with narcotics?

A No, sir.

MR. KRIEGER: You, Mr. Weintraub, may inquire.

THE COURT: Do you have any questions,

Mr. Abruzzo?

MR. ABRUZZO: Just one.

CROSS-EXAMINATION

BY MR. ABRUZZO:

Q Do you know Mr. Indiviglio?

A I do now.

Q Had you ever met him before this trial?

A I met him Onday for the first time.

MR. ABRUZZO: Thank you. I have no further questions.

THE COURT: Mr. Weintraub?

MR. WEINTRAUB: Just a moment, your Honor.

THE COURT: Do you want a short recess before cross-examination, Mr. Weintraub?

1 9

Breene - cross

2 Q Not that you can recall?

3 A If it's something that I touched and I didn't
4 know what it was. Not knowingly.

5 Q Where were you living in 1970, Mr. Breene?

6 A I spent some time here in New York. I spent
7 some time in Florida.8 Q Where were you living when you were living in
9 New York?

10 A I believe out on the Island.

11 Q On the Island, where?

12 A It might have been East Northport, staying with
13 my ex-wife.

14 Q Your ex-wife lives out in East Northport?

15 A She did then.

16 Q How much time did you spend in East Northport
17 in 1970?18 A I don't recall. As much time as I could, with
19 my children.

20 Q Would you spend a day there or a month?

21 A It was more than a day. A few weeks.

22 Q Did you meet Mr. Indiviglio at that time?

23 A No.

24 Q Were you aware that Mr. Indiviglio lived in East
Northport?

A No.

Breene-cross

Q You never met Mr. Indiviglia before Monday, the day this trial started?

A Yes.

Q August 12, 1974?

A Right.

Q Where else did you live in 1970 besides Florida and East Northport?

A I can't recall. I bounce around quite a bit.

MR. WEINTRAUB: I have no further questions.

MR. KRIEGER: No redirect, your Honor.

MR. ABRUZZO: I have no questions.

THE COURT: You may step down.

Next witness, Mr. Krieger.

MR. ABRUZZO: Your Honor, I have an application, if the Court will entertain it, if it pleases the Court.

THE COURT: We will suspend for lunch, and I ask the jury to get back at two o'clock.

(The jury withdrew from the courtroom at 12:55 p.m.)

(Out of hearing of the jury, as follows:)

THE COURT: Do you have any other witnesses, Mr. Krieger?

MR. KRIEGER: Other than Mr. Dillon, no.

EXCERPTS FROM THE TESTIMONY OF JOHN INDIVIGLIO

[A100 through A101 following]

1 3 Indiviglio - direct

2 chemist.

3 Q Did you have any other equipment similar to that?

4 A Quite a bit. I used to go --

5 Q Would you describe some of the equipment?

6 A I had retorts, condensers, centrifuge, vacuum
7 pump, hundreds of test tubes, chemicals, little space in the
8 garage where you used to work, bunsen burner, just about
9 everything.

10 Q What happened to it?

11 A Over the years, I sort of lost interest in it and
12 my mother was always after me to throw things out if I didn't
13 use them.

14 Q Did your father take any of it?

15 A She told him to get rid of the stuff -- get rid
16 of it.

17 Q What kind of a man is your father when it comes
18 to stuff --

19 MR. WEINTRAUB: Objection.

20 THE COURT: Objection sustained.

21 MR. ABRUZZO: Excuse me.

22 Q What are your father's habits, if you know,
23 with regard to things that he has in his home?

24 A He saves them.

25 MR. WEINTRAUB: Objection.

6
[568] Indiviglio - cross

2 Q Did you have a lab then?

3 A No, just a baby chemistry set and when I got
4 older I gained more equipment.

5 Q You seem very sure that this stand is the same
6 one that you had owned at one time?

7 A I could tell you how to work it.

8 Q No -- I didn't ask that. I am asking you, are
9 you positive that's the same stand?

10 A Yes, I am because I remember mounting the green
11 clasps -- the way they face they are for two long tubes that
12 go in there and that's for the electrolysis of water.

13 THE COURT: It didn't come with that, you
14 attached it?

15 THE WITNESS: We bought the stand and the
16 clamp.

17 Q Would anyone who wants to do electrolysis have
18 a similar stand?

19 A Yes.

20 Q So that might be another stand?

21 A No, that looks like it. I bought it second-hand.

22 Q When did you buy it?

23 A My father used to take me into the city, Ace
24 Chemical Company I think it was, and it was second-hand stuff
25 so it wasn't that expensive and I could pick out things that

EXCERPTS FROM THE TESTIMONY OF JOHN BROPHY

[A103 through A106 following]

6

Brophy-direct

[611]

A Yes.

Q Point him out to us.

A The gray-haired gentleman in the blue suit.

THE COURT: Let the record show the witness has pointed out the defendant, Frank Breene.

Q Where did you see the defendant?

A Beth's Bar and Restaurant, Second Avenue in the East 80's.

Q Did you have occasion on that date to see Mr. Indiviglia?

A Yes, I did.

Q Could you point Mr. Indiviglia out.

A The gentleman with the gray suit and the gray sideburns.

THE COURT: Let the record show the witness pointed out the defendant, John Indiviglia.

Q Where did you see Mr. Indiviglia on that occasion?

A The second gentleman walked into Beth's Bar and Grill approximately 1 a.m. on the 25th and engaged Mr. Breene in a short conversation and then they exited and talked to each other in front of Beth's for approximately 15 or 20 minutes.

Q Were you on duty at that time?

A Yes, I was.

Q Will you tell us where you were and where Mr. Breene was at the time Mr. Indiviglia entered the bar.

A Yes. The bar is on Second Avenue. I forget the cross-street -- 82nd or 83rd. When you walk in there are tables on the left and a bar on the right-hand side. I was approximately in the middle of the bar.

There was a woman, who Mr. Breene walked in with and there was Agent O'Connor on my right-hand side and Mr. Breene was next to the lady, standing up (indicating).

Q Mr. Breene was five feet away from you?

A The lady was approximately this distance (indicating), and Mr. Breene behind her.

THE COURT: "This distance," being about three feet?

THE WITNESS: Three, four, five feet, yes.

Q How long was Mr. Breene standing there before Mr. Indiviglia came in?

A I saw the report today. I'm not sure of the time but I think Mr. Breene arrived sometime after 11 o'clock Thursday, May 24th and Mr. Indiviglia sometime after 1 a.m., which would be the 25th of May.

Q Did you have Mr. Breene under surveillance for a period of a couple of hours?

A From approximately 11:15 or 11:20, whenever he

9

Brophy-cross

[624]

Q When you claim you saw Mr. Breene and Mr. Indiviglia outside, where was Mr. Breene with respect to the actual curb?

A They were standing as you exit the bar a few feet I believe to the south of the entrance on that curb -- the same curb where the bar was located. They were approximately 10 or 15 feet I think from the bar entrance.

Q You didn't hear what if anything was said?

A No, sir.

Q You did not see anything pass between one and the other, did you?

A No, sir.

Q And Mr. Breene had come in with a young lady?

A Originally Mr. Breene entered by himself and I overheard him say that he had a young lady park his car and she would walk in.

Q And she came in?

A She came about five minutes later.

Q And they were both together having a drink?

A Yes.

Q And then where did that young lady remain throughout your surveillance?

A For the most part, the young lady remained on the barstool to my left. She may have gotten up to go to the

10
[625]

Brophy-cross

1 ladies room or walk to the back. I am not sure.

2 Q Were you keeping her under observation?

3 A Only as she was with Mr. Breene.

4 Q Now, do you remember what day of the week this
5 is alleged to have transpired?

6 A It was a Thursday night, early Friday morning.

7 Q And did you ever see Mr. Indiviglia and Mr.
8 Breene have a conversation at the bar?

9 A I didn't actually see them have a conversation
10 at the bar.

11 He walked up in his vicinity and they shortly there-
12 after left.

13 Q Then the answer would be no?

14 A I don't recollect in the bar, no.

15 Q Is there any way in which your recollection could
16 be refreshed?

17 MR. WEINTRAUB: I object to the form of the
18 question.

19 THE COURT: Sustained.

20 Q Do you have any document or any memorandum or
21 any material whereby an incident alleged to have occurred
22 two and a half months ago can be refreshed?

23 A I would have to look at the case folder or the
24 reports to see if there was any mention of the incident in
25

MOTIONS FOR ACQUITTAL AND EXCERPTS FROM
THE SUMMATION OF ASSISTANT U. S. ATTORNEY
CHARLES WEINTRAUB

[A108 through A159 following]

[721]

Now that you have made your application you have a look at it and then if he's consumed so much liquor that night that he could -- he admitted that he had six or seven. However, if it shows that he had a \$300 liquor bill, then I may very well vacate judgment of conviction on that ground. I listen to argument with a great deal of interest when you have all the information I have, but almost anything that can be said in this world is a possible ground for impeachment. We have to be selective. And there comes a time when it is so far-fetched that we have to cut it short, the trial court has some discretion and I think the Court of Appeals still agrees we have some discretion in limiting cross-examination, or else the case would go beyond today, much beyond today if I allowed it.

Are you through with all your preliminary applications? Now, your motion.

MR. KRIEGER: May it please this honorable Court, at this time I move for a directed judgment of acquittal under Rule 29B of the Federal Rules of Criminal Procedure, on the ground that there has been that paucity of evidence that would warrant your Honor in not submitting this case to the jury.

THE COURT: Motion denied.

MR. ABRUZZO: I make that same motion.

THE COURT: Motion denied. Turn the lectern around and start your summations.

MR. KRIEGER: Is your Honor imposing a time limit on summations?

THE COURT: No time, except the limitation imposed by the clock as opposed to the calendar. If you go on for hours, I may very well ask you to come to a halt.

MR. KRIEGER: I won't, your Honor.

MR. WEINTRAUB: The money is not in court may I have a moment?

THE COURT: Are you going to refer to the money, Mr. Abruzzo?

MR. ABRUZZO: No.

MR. KRIEGER: I am.

MR. ABRUZZO: May I have a smoke before I start my summation?

THE COURT: We will have a three-minute recess.

(A short recess was taken.)

(After recess.)

THE COURT: Have you get a request to charge?

MR. WEINTRAUB: I have two --

THE COURT: I was talking about Mr. Abruzzo.

MR. WEINTRAUB: I have a copy, your Honor.

1 [778] Weintraub-summation A110
2 MR. WEINTRAUB: (Continuing) But there are many
3 things that can be considered in determining whether a
4 witness on that stand is telling you the truth here in
5 court on a particular day or not.

6 The mere fact that a person has done things in
7 the past doesn't mean that he is lying when he is on
8 that witness stand. When I say lying, I mean
9 deliberately falsifying a fact; an honest mistake is
10 something else and those happen. It happens with
11 everybody from time to time. If that were the case,
12 if the case were that a person's past, a person who has
13 had a speckled past were to disqualify him as a
14 believable witness, I submit that it is a reasonable
15 inference that many cases of this kind would never be
16 brought.

17 You don't get information about a narcotics
18 conspiracy which is a secretive thing by its nature by
19 bringing in as witnesses attorneys or teachers to find
20 out what is going on in that kind of a conspiracy.
21 Of necessity you must talk to people involved.

22 Mr. Somas was the first Government witness, and
23 concededly the weakest. Mr. Dillon said, he is a former
24 prosecutor in this District, that in his judgment
25 Mr. Somas was not reliable, but not reliable in the

1 sense that he was coming in and fabricating information
2 but in the sense that Mr. Somas won't come across with
3 a complete story, would not tell completely what
4 happened. He gives a little bit.
5

6 We are not going to try to hide from you
7 Mr. Somas' motivations, Mr. Somas' personality and his
8 past. Mr. Somas is obviously a person who wants to
9 gain something for himself, no question about it.

10 The question is, are there other ways of
11 determining whether Mr. Somas told the truth when
12 evidence involves not strictly looking to his past
13 performance, not strictly looking to the fact that he
14 was involved in criminal enterprises.

15 I submit to you that there are, and one of the
16 strongest ways is what is known as corroboration, a big
17 word. A simple example of corroboration and perhaps
18 the strongest kind of corroboration is if you are walk-
19 ing down the street and you meet someone you know for
20 a long time, and call him A, okay? Now Mr. A, you know,
21 has a very vivid imagination and he likes to tell
22 stories all the time. Right?

23 And Mr. A comes over to you and says, Hey, guess
24 what?

25 You say -- well, you are curious -- What, Mr. A?

Weintraub-summation

1
2 And Mr. A says, I just came from lower Manhattan
3 and you will never guess what I saw. I looked up and
4 there between the two towers of the Twin Towers I saw
5 way up there a tightrope and a little tiny man who
6 looked tiny up there walking back and forth on the
7 tightrope.

8 You may have thought, Oh, A is telling another
9 fabrication, he is making up another story for all of
10 us.

11 But then, if you happen to be going downtown
12 right then and you pass the Twin Towers and had looked
13 up and you saw a tightrope and a little man walking
14 back and forth, well then, your whole evaluation of
15 Mr. A's story has to change.

16 I think there is no question that anybody then
17 would say, Well, maybe Mr. A hasn't told the truth in
18 the past but he is certainly telling the truth now.

19 Mr. Somas started out, he told us he started
20 working in an automobile parts store, Certified Auto
21 Parts, owned by Mr. Indiviolio, the defendant, back
22 around '65, 1966 -- I think he said several times, I
23 am not good on dates, I don't remember.

24 He said that shortly thereafter he got a friend
25 of his a job there, Thomas Matteo. You may recall

Weintraub-summation

Exhibit 53 in evidence, I read it to you earlier, but there has been quite a bit happening since then. I am not going to read it but it is an execution judgment against Thomas Matteo, an employee of Certified Auto Parts, and this document was found in Mr. Indiviglio's home on September 20th -- I think the 29th, I am not certain of that, 1972.

The beginning of corroboration.

Mr. Somas says Mr. Matteo worked there. Did Mr. Matteo work there?

This document indicates that he did, that Mr. Matteo was working there and a certified copy of a garnishee was served on him.

Mr. Somas testified that there were several foreign cars sitting around, it struck him as unusual, that is, that foreign cars were sitting there without license plates wasting away, a fact by itself which doesn't seem to be significant.

Mr. Somas testified that in '68, '68 -- later on he modified it, he said it could have been '66, it could have been '67, he wasn't sure, he saw a laboratory set up in the house owned by Mr. Indiviglio. He said he saw equipment set up there, and he says that this would have been some time before, to his recollection,

that Mr. Matteo went to jail, Mr. Matteo went to jail in the spring of 1968.

The Reverend Dean didn't move in until May 1, 1968. The fact that electricity was turned on before then doesn't necessarily mean that a laboratory was not set up in the basement. If you have a laboratory set up, you need electricity, possibly you need gas, too, to run certain bunsen burners in the apartment. You are not going to work in a dark place with a laboratory set up.

Mrs. Indiviglio testified that a tenant was in there before, but she said the tenant moved in in 1960 and Con Edison's records indicate that the electricity was turned on -- there was a request to turn it on in October of '67.

So I submit that it indicates clearly that something happened between 1960 when Mr. Kramer moved in and in May of --

MR. ABRUZZO: Objection, there is no question --

THE COURT: Overruled --

MR. ABRUZZO: (Continuing) -- of Mr. Kramer --

THE COURT: This is fair comment.

The jury can accept the interpretation or reject it. The jury can make the determination but it is the

lawyer's obligation and function to argue the evidence.

You may continue.

MR. WEINTRAUB: In May -- well, that happened, it happened between '60 when Mr. Kramer moved in, according to Mrs. Indiviglio's testimony herself, and May of '68 when the Reverend moved in.

The theory of the Government here is that we have what is known as a chain conspiracy, that is you have different people at different levels of the conspiracy and they have different functions. It is kind of analogous to specialization of labor. In other words, if you want to assemble a car you might have one person putting on the wheels, another person putting in the seat and another person fitting windshields on. Every person has a different function.

Well, that is very much what was going on, we submit, during this period of time. Functions change to some extent during that time, some people had to leave, some people came in, but the purpose, the general purpose of being together remained the same, and that was to deal in heroin.

Mr. Matteo, Mr. Indiviglio, we submit, were right at the top. These were the people who are in the area, who are involved in financing, in importing,

1
2 and then below them were the distributors, including
3 Mr. Breene, Mr. Aguilar, Mr. Somas, I believe Mr. Sonny
4 Alarko at one time, and others.

5 Mr. Somas would never have moved up in this
6 organization, I submit, based on his activity but for
7 the fact that Thomas Matteo was going to jail; because
8 of that he moved up to help Mr. Matteo out, to take
9 over some of that responsibility, and that is when he
10 started having contacts with Mr. Indiviglio.

11 He said he had contact with Mr. Indiviglio, a
12 meeting before Mr. Matteo left for jail. That would be
13 the late spring of 1968. The purpose of the meeting --
14 well, first he had a meeting -- let me backtrack a
15 little -- first he had a meeting with Mr. Matteo by
16 himself and Mr. Matteo told him Mr. Indiviglio was
17 planning a trip to Europe to establish, re-establish
18 old connections, people he can buy heroin from. The
19 purpose of the trip was not to buy heroin. Mr. Abruzzo
20 was yelling and screaming about \$3,000. Why would he
21 need \$3,000 if he was going over there to buy heroin?
22 They are buying heroin, you need money like this
23 (indicating).

24 He wasn't going over to buy heroin. The
25 testimony is that he was going over to re-establish old

1 contacts. He needed expense money. At that point they
2 were in a partnership, the partnership was to establish
3 contacts to deal in heroin. Everybody was going to
4 kick in some money to pay Mr. Indiviglio's expenses so
5 he can try to do that.
6

7 Did he make a trip?

8 There is a letter in, Government's Exhibit 52,
9 handwritten, dated 16 December, 1968, and I am going to
10 start about one, two, three, four -- five lines up:

11 "Let me know when you come. I hope you received
12 air tickets okay."

13 Now down at the bottom it is signed Boh.

14 You talk about corroboration, Tyler Somas says
15 the meeting was in the spring of '68 between himself,
16 Mr. Matteo and Mr. Indiviglio for purposes of
17 Mr. Indiviglio being taken care of financially to go to
18 Europe to set up contacts to buy heroin. He then
19 testified that three, four months, he wasn't sure
20 exactly, later, Mr. Indiviglio came to him and asked him
21 for \$5,000 but he only had 3,000 to give him, and that
22 a few weeks later he gave him the \$3,000 and didn't see
23 Mr. Indiviglio again until he returned.
24

25 So we are talking about four or five months after
the late spring of 1968 and here in December of 1968 is

1 a letter found in Mr. Indiviglio's house and it says,
2 "I hope you received the air tickets okay."
3

4 It is from this fellow Bob. All the letters show
5 clearly that Mr. Bob, whoever he is, is in Paris.

6 Was Mr. Somas telling us the truth about that?

7 There is the corroboration, right in the letter.

8 When Mr. Indiviglio returned he claimed to
9 Mr. Somas anyway that the contact had not been fulfilled.
10 Mr. Somas in the meantime was dealing in heroin, he
11 didn't come in and try to fake it, he didn't try to say,
12 No, I wasn't dealing, he came in and said he was dealing
13 in heroin. He said originally he was getting it from a
14 man named Teddy Miller, getting it from a man named
15 Teddy Miller. Then Miller was arrested twice and he
16 started looking for another contact, he knew Mr. Breene
17 for five or six years and made contact with him,
18 continued buying from Breene until the fall of 1969
19 when Thomas Matteo returned. Matteo was angry because
20 Somas when he started, when he started buying from
21 Breene felt he no longer had an obligation to pay any
22 money to Matteo's mother. Remember now when Matteo left
23 he said to Somas take half the money and give it to my
24 mother. Was Somas lying when he told us that when
25 Matteo returned he was angry and he had in effect took

a beating from Matteo because of that?

What did Mr. Aguilar testify to? Mr. Aguilar said he was buying heroin from Mr. Somas and that in the fall of 1969, just at the time that Thomas Matteo was released from jail, he and Matteo and Breene, Breene had a meeting, and what was the meeting about? Mr. Matteo wanted to know how much money Frank Aguilar made selling narcotics.

Now when Mr. Aguilar told him that he had made close to \$80,000 during the time Mr. Matteo was in prison, Mr. Matteo was upset, he was angry. He said that Tyler Somas had only given Matteo's mother \$2,000.

Is that corroboration?

Was Somas telling the truth?

At this time Mr. Aguilar testified that the conspiracy was moving into a large phase. Mr. Matteo wanted to start dealing in kilo quantities which requires more money. Mr. Matteo was in jail so he and Mr. Breene came to Mr. Aguilar to ask for \$16,000.

Does that make sense?

Well, Mr. Aguilar just told him in a meeting that he had made \$80,000. It is logical to assume they thought he might want to invest some additional monies in a bigger operation. He did invest \$16,000.

Mr. Aguiar said, he also said shortly thereafter Mr. Breene arranged with Mr. Matteo to come to his apartment with a kilogram of heroin and they divided it into eight packages, an eighth of a kilogram each, three of the packages were stored in his apartment, and at a subsequent time Mr. Breene came back and recovered those packages.

Now Mr. Aguiar is not dealing with Mr. Somas any more, Mr. Somas is out for a while because of Mr. Matteo being angry at him, so they are not having contact at this point.

Yet strictly they are both saying that Mr. Breene was involved in narcotics, Mr. Aguiar is saying that Mr. Breene along with Mr. Matteo bought a kilo, split it up, and Mr. Somas said that he continued to buy from Mr. Breene when he got back into the business.

After awhile, Mr. Aguiar tells us he was dealing primarily with Matteo, the amounts got larger and larger and eventually as much as ten kilograms of heroin.

Mr. Somas, however, continued dealing with Mr. Breene. Mr. Breene is not in the business, maybe he is out temporarily for a short period of time, the connection dries up, I think there was some testimony to that effect. He is not out of the business.

1 But Mr. Somas is not the only one who said that
2 Breene was dealing in heroin. Mrs. Somas says the same
3 thing.
4

5 Mrs. Somas took the witness stand here and
6 Mr. Krieger refers to baring the soul. I think in my
7 opinion the person who bore her soul in this case was
8 Mrs. Faye Somas. I think that you can, I submit that
9 you can conclude from her demeanor on the witness stand,
10 and that is one of the things you can consider, the way
11 a person testifies and looks, that it was a difficult
12 thing to say some of the things Mrs. Somas was saying
13 here, but she didn't hold back. She didn't hold back.
14 She came here and she testified. I don't think she
15 liked the idea of telling the truth, but she did.

16 She told you she has had a difficult life. She
17 told you that she has used narcotic drugs, never main-
18 line heroin but she was addicted to it, she used it,
19 she used other drugs also. When she realized she was
20 going to be pregnant, she did something that very few
21 people can do by herself. She kicked the habit. That
22 takes a lot of stuff.

23 From 1970 until today she is clean. She doesn't
24 use heroin, she wasn't during the transaction she
25 testified about.

1
2 And you talk about memories, I will tell you
3 that no Government agent, no Government witness and no
4 defense witness here had the memory that Paye Somas did
5 when she was on that stand. Nobody, nobody could pin-
6 point dates and pinpoint places and describe what was
7 happening and describe the physical premises the way she
8 could, not even the Government agents who were writing
9 their reports and keeping up to date as they are
10 required to do.

11 She was able to tell us pretty exactly how often
12 Mr. Breene came to the apartment. He was there a
13 couple of times a month, she said on three separate
14 occasions she personally observed Mr. Breene delivering
15 heroin to Tyler Somas.

16 If she wanted to lie, if she wanted to make up a
17 story, couldn't she have simply testified that every
18 time he came by he had heroin, he came by twice a month
19 over a year's time, twenty-four times he delivered
20 heroin, each time I was sitting there and I watched it.
21 It would have been very simple to do, but she didn't,
22 she remembered three specific occasions, she also
23 remembered several occasions, I think four she
24 testified to, when Mr. Breene came and before he arrived
25 Tyler had no heroin, Mr. Breene came with some sort of

1
2 package, she didn't actually personally observe the
3 package being handed over but after Mr. Breene left
4 there the heroin was there, Tyler Somas had heroin.

5 This is known as circumstantial evidence, she is
6 not testifying that she personally saw Mr. Breene
7 deliver it on those occasions, but that before he got
8 there there was no heroin, after he left there there
9 was heroin. It is a chain of circumstances which points
10 to a fact which is inescapable in this particular
11 instance.

12 Significantly, the last transaction that she saw
13 involving Mr. Breene, she testified, took place in the
14 early summer of 1971 and Mr. Breene delivered a pound
15 of heroin. Mr. Somas said the same thing, early summer
16 of 1971 a pound was delivered -- and it took him all
17 that summer to sell it.

18 Mr. Somas said that they went back to buy more,
19 Mr. Breene said, This is a connection -- well, he
20 wasn't able to get it, but they were negotiating for it
21 and it isn't just selling heroin which is charged here,
22 it is a conspiracy to deal in it even if you aren't
23 able to get it at a particular time because of any
24 reason.

25 What was Mr. Indiviglio doing during this time?

1
2 that the whole conversation had to do with narcotics.
3 She testified that a part of the conversation led into
4 narcotics. They started off remembering things about
5 old times and they remembered some things about Thomas
6 Matteo.

7 Is it a coincidence, a coincidence of them
8 remembering some things about Thomas Matteo or is it
9 true that Thomas Matteo and Mr. Indiviglio were in
10 partnership together, in a narcotics conspiracy?

11 They bring up the fact in the conversation that
12 Indiviglio had loaned money to Matteo or given money to
13 Matteo for attorney's fees, for bail bonds, concerning
14 Matteo's arrest and conviction and jail term.

15 What interest did Mr. Indiviglio have to be
16 paying attorney's fees and bail bonds?

17 They mention Matteo was doing well and ought to
18 give some money to Indiviglio.

19 Now, why should Matteo give money to Indiviglio?

20 But more than that, they mention that, and I
21 believe Tyler Somas asked, how much money he has made,
22 and Mr. Indiviglio said millions.

23 Was he boasting? Maybe it wasn't millions but
24 did he make money?
25

Was there money made in those businesses?

Well, let us take a look:

There has been testimony that the man owned real estate. Mr. Indiviglio owned real estate here in New York, he owned an automobile parts store, he owned a supermarket which I believe some testimony related to, but more significantly --

THE COURT: I am going to ask the jury to disregard that.

I don't believe that any assets acquired over a period of time is any proof that the defendant is engaged in an illegal enterprise.

(continued next page)

1 Thank you. Then the conversation according to
2 Mrs. Somas is that her husband inquired how
3 Mr. Indiviglio was able to get the stuff into the
4 country, and Mr. Indiviglio said I was importing it.
5 I am importing automobiles that I bring in from Europe.
6

7 Did she just make that up? Did she think that
8 up out of her head or is she corroborated of that fact.
9 Let's go back to Mr. Somas' testimony.

10 He said there was a foreign car there at the
11 time. He said that that when he first started working
12 in the auto lot there was three cars rotting away on
13 the premises, three foreign cars, but there is a lot
14 more than that. There are these letters from Europe
15 about importing the cars.

16 Here's a letter dated 15th of July, 1969, part
17 of Government's Exhibit 49. It's in evidence, found
18 in the home of Mr. Indiviglio in 1982.

19 "This dirty pig Muller made me wait there two
20 days and a half. Then he said it's not possible to
21 register brother's name. He is not 21. One car was
22 sent to Avery Avenue and the other car to Caton St."
23 Nothing wrong with importing cars from Europe, no law
24 against that. Ask yourselves these questions: One,
25

1 why is the car coming through two separate individuals
2 in Europe? This fellow, Bob, is not the one who is
3 sending the car.
4

5 MR. ABRUZZO: I'll object, that's not fair
6 comment now on the evidence.

7 THE COURT: May I see the letter?

8 MR. WEINTRAUB: Certainly.

9 THE COURT: I'll allow it.

10 MR. WEINTRAUB: Bob is not sending the cars
11 directly. He's having it sent through Mr. Muller, and
12 in fact there is an invoice in evidence. I haven't
13 put my finger on it at the moment showing a car being
14 shipped here in the name of Muller.

15 And then it says, "Not possible to register under
16 brother's name." Why are they interested in register-
17 ing a car in brother's name, in another person's name?

18 And then he says, "One car is sent to Caton Ave."

19 If you recall, Mr. Indiviglio lived on Caton St.,
20 I believe, and the other two Avery. Why are they
21 sending one car to one address and another car to
22 another address? What's the reason for all that?
23 Avery, one, is on brother's name, and Caton St. is on
24 the name of Gordon. Why are the cars being shipped
25 into this country on phony names, fictitious people?

"You will receive papers at the same time at each address so you need not go especially to Avery when you have bill of lading at Caton St." -- skipping a few lines. "Had a company take car from pier, drive it to Germany because I cannot drive foreign registered cars in my own name."

Why are they taking the car from France to Germany to ship it to the United States? What is the purpose of that?

Another letter, 28th of January, 1969.

"Dir sir: I am leaving now for Germany once more to pay off, imagine the troubles I have with that guy, road tax, insurance, worried like hell."

What is he worried about? Why is he going from France to Germany? Why is he paying road tax and insurance on automobiles in Germany?

Another letter, undated.

"Dear sir: I have sent the car -- all papers up at the Shanker St. Y. Telephone No. 964-5400. The car was shipped to Mr. Gordon at your address. This was done by a fellow in Germany, what a mess. I'll go there once more and will send the next car with the papers. This man got scared very much. The cars were in the parking lot for over two months and the police

1
2 took cars away and had to run after that, and Mr. Muller
3 got them back. I had to pay insurance, road tax. I
4 had no more money to send the other car. I will do it
5 next week, next car."

6 What is the guy scared about in Germany? How
7 can they afford to lay out more money for storage of
8 cars that they are not using in Germany, they intend to
9 ship to the United States? I submit the reference, the
10 conclusion is inescapable. This Bob, whoever he is,
11 was a co-conspirator. He was involved in this
12 conspiracy.

13 MR. ABRUZZO: There is no evidence that this man
14 was any co-conspirator.

15 THE COURT: Overruled. It's fair comment and
16 the Government may argue it.

17 MR. WEINTRAUB: He was the operations man in
18 Europe. He was involved in legitimate businesses
19 there for Mr. Indiviglio. He was involved in SCI,
20 which was a legitimate real estate business in France
21 that Mr. Indiviglio had some interest in as borne out
22 in these letters, but that doesn't mean that you can't
23 be involved in illegal activity also. What better way
24 to carry on your illegal activities than to have legal
25 activities going along with them?

1
2 These letters show clearly that Bob wasn't only
3 Mr. Indiviglio's representative in legitimate business
4 but he was his representative for the purpose of
5 obtaining automobiles, storing heroin in them and ship-
6 ping them into this country.

7 The defense was able to show, and I'll concede,
8 that some of those cars that were shipped in were used
9 later on by Mr. Indiviglio's family, obviously not the
10 ones that were rotting away in the certified auto parts
11 lot. There is certainly nothing to prevent you from
12 removing the heroin from the cars and then using the
13 cars or selling the cars, or letting them rot away or
14 doing anything you wish to afterwards. The cars are
15 merely a means of transporting.

16 Was he bringing in heroin? These letters clearly
17 show that he was.

18 In addition, we have a letter, part of
19 Exhibit 52, dated the 22nd of February, 1972.

20 "Dear Sir: I went to see Cousin and have
21 straightened out a few things. He was mad, for the
22 only reason because two years ago I asked in your name
23 about the addresses and he thinks that it was for me
24 and he did not like that. That was not true but I did
25 not want to insist. I assume, on this problem, you

1 [800]
2 should never any more mention this thing to him. He's
3 scared."

4 I don't know if you recall when I read the
5 letters originally, but there are references to certain
6 named people; Winter for one, and one or two others.
7 Why suddenly do we have someone referred to without his
8 name? Who is Cousin?

9 "You should never any more mention to him this
10 thing. He's scared."

11 What is Cousin scared about? Well, I'll tell
12 you what Cousin was scared about. Detective Thompson,
13 a man who had been working in narcotics for a number of
14 years worked in an undercover capacity where he had to
15 learn the phrases substituted for narcotics, stating
16 the most commonly code names for narcotics are dresses
17 and shirts. "I asked in your name about the dresses and
18 he thinks that it was for me and he did not like that."
19 He asked about the dresses. Whose dresses? Why not
20 refer to the guy by name? Why not say, "I want to see
21 Mr. Vasiley about the dresses? Why call him Cousin?
22 And why say that he's scared? Is there something to be
23 frightened about dealing with dresses? Is that some-
24 thing to be concerned about?

25 The letter is signed Bob.

Another letter, the same exhibit, starts out:

"Dear Sir: Under No. 6. I am very much disappointed with Cousin, but the life is getting more and more expensive and the other people will need money soon. Since you left we had two raises. Taxes like you said stay about the same at the new rate."

There are several other references to Cousin throughout these letters. His name is never shown.

✓ Ask yourselves why that's done. I submit that these letters clearly indicate that Mr. Indiviglio was in fact involved in bringing heroin into the United States in automobiles. Did Mrs. Somas know about these letters? These letters weren't recovered by her, they were recovered by the police. She didn't go rummaging through Mr. Indiviglio's house. She was a guest there. Is that corroboration of that statement that Mrs. Somas made? Did she make up that statement? Did she make up that conversation that Mr. Indiviglio said that he was importing heroin in automobiles? I submit very clearly not. These letters corroborate in the strongest way.

Let's move forward, September of 1972. You recall Mr. Aguiar testified that he wanted one more ten kilo transaction as part of a means of recovering a lot

1 of money that he lent Mr. Matteo after the last couple
2 of years. He said that he packaged \$60,000. The
3 agreement was that Matteo owed Mr. Aguiar \$120,000;
4 Aguiar would give him additional 60,000, \$250,000 total,
5 and Mr. Matteo would buy ten kilograms of heroin and
6 give it to Mr. Aguiar. The price was to be \$27,000 a
7 kilogram, and the other twenty would be exchanged later.
8

9 Mr. Aguiar testified that he packaged the money
10 in \$10,000 packets of \$100 bills each, and he marked
11 on those packets the number ten, the number ten at the
12 top of each packet. Government's Exhibit 50, you will
13 recall, it was brought out that there were more packets
14 in here than shown in the photograph -- if you want to
15 take a look at it. And he also testified that this
16 money was counted several times. You may notice a
17 striking thing that all these fifty dollar bills have
18 been segregated. If you compare the fifty dollar
19 packets with the one hundred dollar packets you may
20 also notice that they are thinner. If you have \$100
21 packets of \$10,000, then you have to have less than
22 that in a fifty. In other words, these packets are not
23 in the original order that they were found in. They
24 have been counted and \$50 bills have been separated
25 from 100's. That's a fair conclusion, but we fortunately

1 don't have to depend on that condition that the money is
2 in at the moment. We have a photograph taken at the
3 time. The photograph shows thirty-five packets.
4

5 Now, the officer testified that the money was
6 counted, it's \$350,000 and fifty dollars -- it's not
7 the right way of saying it but these packets, if there
8 are thirty-five and there is approximately \$350,000 it
9 should contain \$10,000 each. If you take a close look
10 at the package and these photographs were taken before
11 they were disturbed, laid out on the floor, and a
12 photograph was taken, you will see.

13 Let's see if I can pick out something. For
14 instance, the second package right-hand column from the
15 pack, a packet of \$100 bills on the top with a number
16 10 written on it, just 10.

17 Counting down, five packets down has a 10 written
18 on it also. Now, I've looked through this, I submit if
19 you take a careful look at this you'll find five and
20 there may be a sixth, it's partially covered up by the
21 wrapper, but five and possibly, very likely six packets
22 with the number 10 written on the top bill.

23 How did Mr. Aquiar know that six packets of
24 \$10,000 each would have the number ten written on the
25 top for a total of \$60,000? Is that corroboration of

1 Mr. Aguiar's testimony about what was happening in
2 September of 1972? What was the purpose of that money?
3 The purpose he said for Mr. Matteo to obtain ten kilo-
4 grams of heroin. Where is the money found? The day
5 after it's delivered to Mr. Matteo, that 60,000, not by
6 itself, along with \$290,000 more, for a total of
7 \$350,000, is found with Mr. Matteo's body in the house
8 of Mr. Indiviglio. Mr. Matteo, having been shot five
9 times. Mr. Matteo with a gun in his right hand with
10 one bullet discharged from that loaded gun.
11

12 In light of all the other evidence and all the
13 other dealings had between Mr. Matteo and Mr. Indiviglio
14 as far as dealing with narcotics was concerned. What
15 do you suppose Mr. Matteo was doing? You don't have
16 to speculate to wonder what Mr. Matteo was doing with
17 \$350,000 in Mr. Indiviglio's home. Was he paying a
18 social call? Was he stopping by to show Mr. Indiviglio
19 the \$350,000 in case he never had seen that amount
20 before, or was he there because he and Mr. Indiviglio
21 continued and were at that very moment involved in
22 attempting to import heroin into the United States, but
23 while the house was clean, the dogs did not find the
24 scent of heroin there. Of course not. When you deal
25

1 in that quantity of heroin you're smart enough not to
2 handle it in your home, that's a fair inference. When
3 Mr. Indiviglio did have a laboratory set-up years back,
4 '68, '67, he didn't have it set up in the house where
5 he was living. He had it set up in a vacant apartment.
6 He's not going to handle stuff in his own house. In
7 fact, he probably wasn't even fooling around
8 chemically with the stuff for a number of years. He
9 didn't have to. He was dealing in large quantities
10 and he was bringing in. He didn't have to try and
11 purify it. It wasn't brown, spoiled heroin that he had
12 to fool around with any more.

13 What was Mr. Matteo doing there the day after he
14 received money to buy heroin? A simple question.
15 The inference is clear. Not only that, the dogs picked
16 up the scent of heroin on the automobile door, the car
17 door of Mr. Matteo. Had he given up the business?
18 But this wasn't a \$350,000 deal. This wasn't the deal
19 involving just \$350,000. We might have thought so,
20 but Mr. Breene tells us otherwise. Mr. Breene is
21 intoxicated in a bar, he gets drunk, probably never
22 would have said it otherwise, and he lets it slip out,
23 tells a friend of his who is also a cop, "I'm facing
24 twenty years, you know, that 350 they recovered, they
25

missed another 90,000 in the trunk of a car."

We are now talking about \$440,000. How did Mr. Breene know there was another \$90,000 that was in Mr. Indiviglio's house? What was that other \$90,000 doing there? Was Mr. Breene still involved? Did Officer Schmidt, does he have a speckled past? Does he have some reason to come in here to lie? Does he have a motive? Is he receiving any monetary compensation? He has to come in here and make up that story?

MR. KRIEGER: I must take exception to that. He's vouching for the credibility of his witness.

THE COURT: This is not the Government vouching for the credibility of the witness. Mr. Weintraub said nothing more. Read the statement back.

(Whereupon, the statement was re-read to the Court.)

THE COURT: Objection overruled.

MR. WEINTRAUB: And then Mr. Breene takes the stand, takes the stand, he tells you that Officer Schmidt just lied. He tells you he never made that statement.

Does Mr. Breene have an interest in telling the truth on that stand or not telling the truth when he's on the stand? Sure he has an interest. He has the best interest in the world, that is that he faces

2 criminal charges.

3 MR. KRIEGER: Objected to.

4 THE COURT: Overruled.

5 MR. WEINTRAUB: Mr. Breene tells us that in
6 effect he was working on and off, first one place, then
7 another place, leaving here and there. Yet he always
8 managed to have enough money to go to bars a couple of
9 weeks on the average. I submit going to bars may well
10 be Mr. Breene's downfall. Mr. Breene was in a bar on
11 May 24th and 25th that happened to be under surveillance
12 by agents in the drug enforcement administration.

13 First, Mr. Breene testified that he never met
14 Mr. Indiviglio before this trial began. I submit that
15 that becomes incredible -- before we even get into the
16 agent who testified here. It's incredible because
17 Mr. Breene couldn't have known that there was another
18 \$90,000 in the trunk of a car at Mr. Indiviglio's house
19 unless he was involved with Mr. Indiviglio and Mr. Mattso
20 in purchasing narcotics.

21 Well, the agents come in. First, Mr. Brophy,
22 and he tells us that he's in the surveillance on
23 May 24th, just a couple of months ago. First he sees
24 Mr. Breane come in, the young lady, they sit down right
25 next to him, as a matter of fact. The young lady is

1 there, Mr. Breene is next to the young lady. Then
2 Mr. Breene goes back and meets another gentleman.
3 Then they have a conversation with him and a third
4 -gentleman, and then a little later on, or a little
5 while later Mr. Indiviglio comes in, talks to Mr. Breene,
6 the two of them walk out on the street and have a
7 conversation for ten to twenty minutes, not that they
8 said hello and good-bye but they spoke for ten to
9 twenty minutes. That officer positively identified as
10 the other person as Mr. Indiviglio.
11

12 Mr. Breene then gets back on the stand, he's
13 now fully aware that what he was doing in that bar was
14 observed by narcotic agents. And what kind of
15 response does he give to the questions? Does he say I
16 was in the bar? I met a man named Taylor? I didn't
17 know his name. I met a man, a black man about six
18 foot four 260 lbs. Then I met another man with him.
19 Then I met a third man. He doesn't say that. He
20 remembers very exactly that he did not meet
21 Mr. Indiviglio there but he doesn't remember whether
22 or not he met a black man six foot four, 250 lbs. He
23 said possibly. I asked him how many guys do you know
24 that size? How many black men do you know six foot
25 four, 250 lbs.? He said five or six. Mr. Breene

1 must be a football fan. He knows an awful lot of big
2 guys. I said, "Did you meet another man after meeting
3 this first man -- possibly -- could have been -- might
4 have been -- wouldn't give an answer, wouldn't be
5 pinned down. Why?
6

7 Why? Because he knew that there were other
8 people there to testify about that, agents of the Drug
9 Enforcement Administration -- not sure about that.

10 THE COURT: Are you talking about agents who did
11 not testify?

12 MR. WEINTRAUB: No. I didn't mean to imply that,
13 your Honor.

14 THE COURT: All right.

15 MR. WEINTRAUB: I mean the agents who did
16 testify in this case. What did they say? Mr. O'Connor
17 then testified, he said yes, there is no question
18 Mr. Breene was there. He met with a black male six
19 foot four, 250 lbs., had a conversation with him; met
20 a second male and then later on met Mr. Indiviglio.
21 Was he absolutely sure it was Mr. Indiviglio? Yes,
22 absolutely sure it was Mr. Indiviglio.

23 Does he have a reason to lie?

24 MR. KRIEGER: Objection.

25 THE COURT: Overruled. I'll allow that question

1 to the jury.

2
3 MR. WEINTRAUB: Why would Mr. Breene not be
4 pinned down? Why would he not give a specific answer
5 there? Why did he tell Officer Schmidt that there was
6 another 90,000 that was not recovered in the trunk of
7 a car? Where is that car and who was driving it on
8 that day? A matter of speculation, no, a matter of
9 logical inference. Mr. Matteo, the day after he
10 receives money to purchase heroin is found in the home
11 of Mr. Indiviglio with \$350,000 in cash and Mr. Breene
12 knows there is another 90,000 in the trunk of a car.
13 That by itself, I submit, is sufficient in light of
14 their past dealings, I think. There is no question
15 about what was happening in September of 1972.

16 Thank you.

17 THE COURT: We will take a five-minute recess
18 and I will charge the jury.

19 (Whereupon, the Court recessed.)

20
21 (continued next page)

:Spa

1 THE COURT: I have the first note. They want
2 Exhibit 47 and Mr. Weintraub's summation.

3 MR. WEINTRAUB: This is 47.

4 THE CLERK: Jury note marked Court Exhibit 4 for
5 identification.

6 THE COURT: The Clerk may turn over Exhibit 47
7 to the marshals.

8 MR. KARR: Mr. Weintraub's summation was taken by
9 three reporters and Mr. Shapiro, the reporter who took
10 the beginning left the building but apparently he
11 dictated it.

12 THE COURT: Can it be heard? Will you listen
13 and repeat it to the jury?

14 MR. KARR: It could come out from the machine,
15 his voice.

16 THE COURT: Now, one thing you say I said something about the
17 \$90,000? I must have confused --

18 MR. WEINTRAUB: You confused the \$90,000 as a
19 statement only as to credibility and it was not, and I
20 think it was merely in your charge.

21 THE COURT: When I got back to my office I thought
22 I said something wrong about that. I said the statement
23 concerning \$90,000 had nothing to do with that; there
24 was \$90,000 but it just bore on his credibility.

25 MR. WEINTRAUB: It got confused in the episode of

the 24th and 25th.

THE COURT: You don't think I ought to correct it?

MR. WEINTRAUB: I would request your Honor to do so.

THE COURT: If I were sure that they forgot about it, it's just as well. I'm concerned about confusing them by either trying to straighten it out or by reminding them of what I said. I have to find out what I said first. Did it sound terribly confusing to you?

MR. WEINTRAUB: It came right in at the tail end of your discussion on credibility of Mr. Greene. I think I would be satisfied, your Honor, if you could just perhaps re-charge that Mr. Greene's activities on the 24th and what the jury believes and doesn't believe go only to his credibility, but the statement made by Officer Schmidt about the \$90,000 is a statement that can be considered in connection with the crime itself, as to Mr. Greene.

MR. KRIEGER: If believed.

MR. WEINTRAUB: That goes without saying.

MR. KRIEGER: None of us ever heard of a jury requesting the prosecutor's summation.

THE COURT: The last time they asked for the summation of one of defense counsel and that defense

3 1 lawyer discussed the law, and in my opinion there was
2 nothing in what he said that correctly stated the law,
3 and I was in a little embarrassing position. They
4 wanted it, they heard it once. I felt they had the
5 right to hear it again. That was last week.

6 MR. ABRUZZO: The summation is not evidence.

7 THE COURT: I believe the jury is entitled to
8 hear it once. They are entitled to hear it twice, and
9 I don't select what they want to hear. I say in the
10 fourteen years I'm sitting here it only happened twice,
11 last week they wanted defendant's summation. I was
12 surprised. I gave it to them and here it is the
13 prosecutor's summation. They may want to see what he
14 said can be sustained. It may be flattering to
15 Mr. Weintraub that they want to hear what he said.

16 MR. WEINTRAUB: I don't consider it flattering.

17 THE COURT: You don't know the reasons for it
18 and I don't, either. I have some faith in the jury,
19 whatever reason, if they want it I'll give it to them.

20 MR. KRIEGER: May I be correct in saying no
21 matter what might happen with respect to a jury, whether
22 it's hung or anything else, that I would be free to go
23 some place else Monday morning?

24 THE COURT: I have another case. I wish I could
25 foul you up. I want you to know how it feels (smiles).

4
1 MR. KRIEGER: You are in a tight court and we
2 got through. It was a half a day at the Court of
3 Appeals which is nobody's fault; four and a half days
4 you got rid of the case.

5 THE COURT: Read back to me something about the
6 \$90,000. The point where I speak about the admission
7 and it has to be voluntarily made and not pure accident.

8 MR. KARR: About halfway through, your Honor.

9 THE COURT: It's after I talk about inference
10 and presumption and I talk about credibility of
11 witnesses and inconsistent statements; after inconsistent
12 statements I think it would be. Before I charge on
13 the conspiracy.

14 MR. KARR: I have Henry Shapiro's home telephone
15 number.

16 THE COURT: Suppose I tell the jury what the
17 problem is and read what you have and tell them we could
18 get the other Reporter here if they want it. Maybe it's
19 not the point they want.

20 MR. KARR: I have all of Mr. Weintraub's
21 illustrious words here.

22 (Whereupon, Mr. Karr proceeded to read segments
23 of the Court's charge to the Court.)

24 MR. WEINTRAUB: You start giving Defendant
25 Breene's testimony by way of example, and then got into

5 1 a discussion about his testimony of the May 24th
2 transaction and at the very end of that you mention
3 \$90,000.

4 THE COURT: Maybe when I mentioned the \$90,000
5 transaction --

6 MR. WEINTRAUB: That was earlier than the charge
7 on voluntariness.

8 THE COURT: Your summation bothered me in
9 reference to the \$90,000. I don't know. His statement
10 which was an admission against him would be any proof
11 that there was \$90,000, certainly not as it affects
12 Mr. Indiviglio.

13 MR. ABRUZZO: Mr. Weintraub said in his summation
14 that the \$90,000 was in Mr. Indiviglio's trunk. There
15 was no proof of that whatsoever.

16 MR. WEINTRAUB: I said it was in the trunk of a
17 car.

18 MR. ABRUZZO: I think you said whose car it was.

19 THE COURT: I didn't think that was proper. I
20 think I told the jury to disregard that.

21 (Whereupon, Mr. Karr, the Court Reporter,
22 continued reading segments of the Judge's charge to the
23 Court.)

24 THE COURT: Will you hold that part? I would
25 like to say something about that to correct it. Just

1 disregard what I said about that and I may make some
2 reference to your statement about the \$90,000 and they
3 shouldn't consider what Mr. Breene said as evidence
4 against Mr. Indiviglio.

5 MR. WEINTRAUB: I have no objection to that.

6 MR. KRIEGER: As part of your charge, you did
7 make mention that Mr. Breene said he was at the bar at
8 some occasion. Would you also add the corollary that
9 he denied that Mr. Indiviglio was there with him?

10 THE COURT: I'm not going to do that. The
11 Government will ask me to remind them of other bits of
12 evidence. I just did it to give the jury an example of
13 what I'm talking about. I don't intend to marshal the
14 evidence, that's for the lawyers. They know that
15 Mr. Breene denies Mr. Indiviglio was there, that's what
16 it was all about. Why should I make it look like a
17 summation?

18 Seat the jury.

19 (Whereupon, the jurors entered the courtroom.)

20 THE COURT: I want you to realize that I made
21 some error. It may have been confusing when I discussed
22 the effect of the testimony concerning the claim of
23 meeting at Betz Bar and Grill on May 24th and May 25th,
24 and I said if you credit the testimony it's chargeable
25 only against the defendant Breene; conspiracy had

1 terminated. If you believe there was a conspiracy under
2 the Government's claim it couldn't be introduced against
3 Mr. Indiviglio, and then I said something about the
4 \$90,000 which had nothing whatever to do with the
5 incident of May 24th or May 25th, but had something to do
6 with an alleged admission that Patrolman Schmidt said
7 the defendant made, and I said the following, and
8 Mr. Karr will read it to you, which incidentally was
9 all wrong, but I'll try and correct it.

10
11 MR. KARR: (Reading) "Now, I emphasize that
12 because I remember Mr. Weintraub referring to that again
13 and again in summation and I hope you didn't get the
14 impression that that was proof that there was \$90,000
15 more than the \$350,000. If you got that impression, just
16 strike it. It should not have been said. It was an
17 attack on Mr. Breene's credibility, if you believe that
18 it all happened, and of course you look at it in the light
19 of Mr. Breene's testimony. If you don't believe it hap-
20 ened, then just forget about it."

21 THE COURT: All right, that portion of it. The
22 reference to \$90,000 in the testimony of Patrolman
23 Schmidt was part of the alleged admission. In other
24 words, some indication that defendant Breene was aware
25 of what was happening and that's the category, it's
against Mr. Breene; if you believe that he did say it

1 and if you believe that it was knowingly and voluntarily
2 made and you understand what I said about the Govern-
3 ment's burden, it must prove beyond a reasonable
4 doubt that he was aware of what he was saying and
5 that what he said, he said intentionally and
6 voluntarily. What I want to say further about that
7 is that admission can in no way be charged against
8 Mr. Indiviglio. You can't, in assessing the proof
9 against Mr. Indiviglio, take that statement that
10 allegedly was made by Mr. Breene and charge it against
11 Mr. Indiviglio. It's only Mr. Breene's statement,
12 a claimed admission.

13 Now, that's one category of statement made by
14 Mr. Breene. The other testimony, the May 24th-25th
15 testimony, was offered for impeaching purposes, because
16 Mr. Breene testified that he didn't know Mr. Indiviglio.
17 Now, if the Government proved that he did meet
18 Mr. Indiviglio then you consider that in weighing
19 Mr. Breene's testimony, so those are the two purposes
20 of bringing that testimony before the jury, the
21 admission testified to by Patrolman Schmidt and all the
22 testimony of what occurred on May 24th and May 25th, and in
23 neither of those two categories is Mr. Indiviglio
24 involved at all. Just take that out of the case when
25 you weigh the case against Mr. Indiviglio.

9 1 Now, I must tell you about a problem we have.
2 You wanted Mr. Weintraub's summation. You probably
3 were aware that we had three reporters taking this case.
4 The reporter that took the first part dictated it into
5 a machine for transcription and went home. Now he's
6 on call and I'll bring him back, but I thought that I
7 would do it this way: I would ask Mr. Karr to give
8 the next portion and Mr. Legendre to finish it; if
9 that doesn't contain the part of the summation that you
10 are interested in then I would call Mr. Shapiro back
11 and tell him to bring his notes and read it to you,
12 but don't hesitate to ask for it.

13 Now, again understand that summation is not
14 testimony. It's just the argument of counsel and don't
15 lose sight of the other summations by the other lawyers,
16 and I know that Mr. Weintraub in the latter portion of
17 the summation talks about that \$90,000 and I just want
18 you to disregard that and I think it was improperly
19 said.

20 All right.

21 (Whereupon, Mr. Karr, the Court Reporter, read
22 back his portion of Mr. Weintraub's summation.)

23 THE COURT: May I interrupt? If any juror finds
24 that he or she has heard enough just raise your right
25 hand and if I get all twelve then I'll stop it. I just

D 1 want the jurors to hear what they want to hear, no
2 sense wasting time.

3 If the jurors feel that the deliberations will
4 go beyond 7:00 o'clock I suggest that we get our orders
5 in for dinner; so may I suggest that you go into the
6 jury room, if you want dinner make your choices and
7 then we'll continue this so in the meantime we could
8 get the orders in.

9 (Whereupon, the jurors were excused.)

10 THE COURT: My impression is that about half
11 the jurors have already heard enough. I don't think
12 it's going to go much longer. It's very important
13 that we get their orders in because it could delay it.
14 It takes about an hour to get the order back.

15 MR. ABRUZZO: Would you tell the jury again
16 after they hear this, that's what Mr. Weintraub thinks
17 the facts are and they are the sole judges?

18 THE COURT: I'll say that's Mr. Weintraub's
19 statement. They are the finders of the facts and that
20 isn't testimony, it isn't facts.

21 MR. KRIEGER: Would the rest of it be read?

22 THE COURT: It's up to the jury. I say the
23 indication was about half already said they had enough.

24 MR. WEINTRAUB: I was about to say how many I
25 saw without hands up.

11 1

THE COURT: I think three, four and five still
2 wanted to hear some.

3

4

Let the record show that the marshals returned
4 Exhibit 52 from the jury.

5

6

I have another note from the jury. Are both
6 lawyers here? We agree that there is no need to hear
7 any more of Mr. Weintraub's summation.

8

9

You wanted me to tell them that it's just
9 summation but they never got back in the courtroom.
10 You want them to come in and I will say that I don't
11 think --

12

13

MR. ABRUZZO: Only because the parts read relate
13 to facts.

14

15

THE COURT: All right.

16

17

MR. WEINTRAUB: I agree.

18

THE CLERK: Jury note marked Court Exhibit 5.

19

20

THE COURT: The exhibits that contained all the
18 letters by Bob that were read by Mr. Weintraub. The
19 jurors phoned home to say they will be returning home
20 late.

21

22

THE CLERK: Jury note marked Court Exhibit 6 for
22 identification.

23

24

THE COURT: Get the exhibit, Mr. Weintraub, that they refer
24 to and show it to Mr. Abruzzo and Mr. Krieger.

25

(Counsel looking at exhibit.)

12

1

THE COURT: Seat the jury.

2

(Whereupon, the jurors entered the courtroom and entered the jury box.)

3

4

THE COURT: Hold everything. I'm instructing the jury to write their phone numbers they want called, and if you want any message I'll have the marshal call and leave a message. The exhibits that you asked for will be sent in to you.

5

6

7

8

9

MR. KRIEGER: Your Honor --

10

THE COURT: Don't say a word, I realize it.

11

The portion of the summation was a discussion by Mr. Weintraub of the evidence. Of course, that isn't evidence, it's only what he says, what he finds from the evidence.

12

13

14

15

All right, the jury is excused.

16

(Whereupon, the jurors were excused.)

17

THE COURT: I understand that Mr. Breene wasn't there for that brief discussion with the jurors. I could have him brought in.

18

19

20

MR. KRIEGER: No purpose would be had having him brought back in.

21

22

THE COURT: When the jurors' food arrives we'll send everyone out for dinner.

23

24

25

(continued next page)

spm R2

1 THE COURT: This is a note from the jury. The
2 jury wants a large blow-up of the money.

3 THE CLERK: Note from the jury marked Court
4 Exhibit 7 for identification.

5 MR. KRIEGER: Apparently, there are two exhibit
6 numbers on it. Would the Court have the Clerk remove
7 one?

8 THE COURT: The other case may go up on appeal.
9 Can you put something over it?

10 MR. KRIEGER: They might think it has some
11 degree of validation because it's been used on more
12 than one occasion.

13 MR. WEINTRAUB: They probably wouldn't even
14 notice it.

15 THE COURT: Martin, can you put a piece of
16 masking tape over both without disturbing the exhibit
17 numbers? When you do that it may call their attention
18 to it. I don't think they would pay any attention to
19 those two stickers. It's the same trial number. One
20 says Exhibit No. 32 and the other one is 46. You try
21 to cover up, then they will wonder what it is.

22 The Courtroom Deputy is masking both exhibits.
23 It may now be delivered to the Foreman.

24 As soon as the food arrives I'll tell them I
25 can't take any more notes unless you instruct me to

2

1

tell the jurors that we are out for dinner at that time.

2

MR. KRIEGER: Yes.

3

THE COURT: Wait until it arrives. Then I'll

4

tell them.

5

MR. KRIEGER: Can we leave now?

6

THE COURT: We'll take the chance and I'll

7

instruct the marshal to tell them when the food arrives

8

that all the lawyers and everyone else is excused for

9

dinner; if they bring in another note before their food

10

arrives then the marshal will tell them that we are out

11

for dinner. I expect you back about quarter of eight.

12

(Whereupon, a recess was taken.)

13

(After recess.)

14

THE COURT: Jury note says: Transcript of

15

Aguiar's testimony.

16

THE CLERK: Note from jury marked Court Exhibit 8

17

for identification.

18

THE COURT: Mr. Aguiar started testifying on

19

August 13 on page 231. Seat the jury.

20

(Whereupon, the jurors are now seated in the

21

jury box.)

22

THE COURT: You asked for the transcript of the

23

testimony of Frank Aguiar. I can't give you the

24

transcript because there is a lot in here that we

25

discussed outside your hearing and if I didn't want you

1 to hear them I won't let you hear it now. Any time all
2 the jurors find they have enough read to them just
3 raise your right hand and you don't have to keep your
4 hands up. I'll try and remember how many raised their
5 hands. As long as one juror wants to hear it I'll
6 continue the reading.

7 (Whereupon, the Court started from page 231 of
8 the transcript of Mr. Aguiar's testimony.)

9 (Whereupon, the Court concluded the reading of
10 the testimony of Mr. Aguiar.)

11 THE COURT: The jury is excused for further
12 deliberations on the matter.

13 (Whereupon, Court stood in recess at 8:30 p.m.)

14 (After recess.)

15 THE COURT: The jury wants the cross-examination
16 by Mr. Abruzzo of Mr. Aguiar.

17 THE CLERK: Jury note marked Court Exhibit 9
18 for identification.

19 THE COURT: Seat the jury.

20 (Whereupon, the jury entered the courtroom at
21 8:40 p.m.)

22 THE COURT: You asked for the cross-examination
23 by Mr. Abruzzo of Mr. Aguiar. Starting at page 327
24 line 22.

25 (Whereupon, the Court read the cross-examination

4 1 by Mr. Abruzzo of Mr. Aguiar.)

2 MR. ABRUZZO: There is a re-cross.

3 THE COURT: They only asked for cross. Do you
4 want to hear any more?

5 THE FOREMAN: Yes.

6 THE COURT: Did you want to hear Mr. Krieger's
7 cross-examination?

8 THE FOREMAN: No.

9 THE COURT: Redirect by Mr. Weintraub?

10 THE FOREMAN: Yes.

11 THE COURT: And the recross by Mr. Abruzzo?

12 THE FOREMAN: Yes.

13 (Whereupon, the Court proceeded to read the
14 redirect examination by Mr. Weintraub of Mr. Aguiar
15 and also the recross-examination by Mr. Abruzzo of
16 Mr. Aguiar.)

17 (Whereupon, the Court completed reading of said
18 matter at 8:55 p.m.)

19 (Whereupon, the Court stood in recess.)

20 (After recess.)

21 THE COURT: Seat the jury.

22 (Whereupon, the jury entered the courtroom at
23 9:25 p.m.)

24 THE COURT: Madam Forelady, I have your note
25 that the jury reached a verdict. United States of

5
1 America v. Frank Breene and John Indiviglio. How do
2 you find the defendant Frank Breene; guilty or not
3 guilty?

4 THE FORELADY: Guilty.

5 THE COURT: How do you find the defendant John
6 Indiviglio, guilty or not guilty?

7 THE FORELADY: Guilty, your Honor.

8 THE COURT: Juror No. 2, you heard the verdict as
9 rendered by the Forelady; is that your verdict?

10 JUROR NO. 2: Yes.

11 THE COURT: Juror No. 3, is that your verdict?

12 JUROR NO. 3: Yes.

13 THE COURT: Juror No. 4, is that your verdict?

14 JUROR NO. 4: Yes.

15 THE COURT: Juror No. 5, is that your verdict?

16 JUROR NO. 5: Yes.

17 THE COURT: Juror No. 6, is that your verdict?

18 JUROR NO. 6: Yes.

19 THE COURT: Juror No. 7, is that your verdict?

20 JUROR NO. 7: Yes.

21 THE COURT: Juror No. 8, is that your verdict?

22 JUROR NO. 8: Yes.

23 THE COURT: Juror No. 9, is that your verdict?

24 JUROR NO. 9: Yes.

25 THE COURT: Juror No. 10, is that your verdict?

A160

TRANSCRIPT OF SENTENCING HEARING

[1]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

JOHN INDIVIGLIO,

Defendant.

:

:

:

:

74-CR-122

United States Courthouse
Brooklyn, New York

October 5, 1974

B e f o r e:

HONORABLE JACOB MISHLER, CHIEF U.S.D.J.

IRA RUBINSTEIN
COURT REPORTER

A p p e a r a n c e s :

DAVID G. TRAGER, ESO.,
United States Attorney
for the Eastern District of New York

BY: RONALD F. DE PETRIS, ESO.
Assistant United States Attorney

LUDWIG ABRUZZO, ESO.,
Attorney for defendant.

1 MR. ABRUZZO: Your Honor, please, at the con-
2 clusion of the trial, motions were reserved to today.

3 THE COURT: All right.

4 MR. ABRUZZO: Before the Court imposes sentence,
5 I would like to, for the record, if it pleases the
6 Court, move on behalf of the Defendant John Individlio
7 to set aside the verdict of the Jury and to enter a
8 verdict of acquittal for the following reasons:

9 It is the contention of this defendant, your
10 Honor that the allegations in the indictment were not
11 proved by the quantitative evidence sufficient as a
12 matter of law to prove the defendant guilty beyond a
13 reasonable doubt; that the record is barren of any
14 testimony to show that the Government has sustained
15 its proof; that the allowance of -- etc., throughout
16 the entire trial where there was no evidence produced
17 at the trial to indicate that those paraphernalia were
18 in any way used in a narcotics sale or in a narcotic
19 production or in any way involved with narcotics.
20 on the testimony of the police officer that stated
21 that they were free from any traces of narcotics, all
22 of those paraphernalia should have been removed from
23 the view of the Jury and there being around to remain
24 in their presence throughout the trial brings prejudice
25 to the defendant; that the Jury should have disregarded

1 all of the hearsay testimony throughout the trial.

2 Their not having their sufficient evidence,
3 sufficient substantive evidence to prove as a matter
4 of law that a conspiracy existed and therefore, all
5 of the hearsay and circumstantial evidence the Jury
6 was allowed to hear, should have been stricken.
7

8 As a matter of law, there was a reasonable
9 doubt as to the defendant's guilt and for those reasons
10 the defendant now moves this honorable Court to set
11 aside the verdict of the Jury and to enter a verdict
12 of acquittal.

13 THE COURT: Motion is in all respects denied.
14 I'm trying to recall whether U.S. against Pacellie,
15 just recently decided, discussed the very point of
16 equipment that could be used for legitimate purposes
17 produced in for consideration by the Jury as to whether
18 it is used for illegitimate purposes. It might do
19 you both some good to have a look at the case.

20 I think that case discussed it and there was
21 no -- if that was the case just drecently decided last
22 week. The motion in all respects is denied.

23 MR. ABRUZZO: If your Honor please, then with
24 regard to the Probation report I'd like to address
25 myself to that.

THE COURT: Have you seen it?

1 MR. ABRUZZO: Yes. I have carefully read it
2 this morning. As I have said, the statement of facts
3 set forth, have no relation to this defendant, where
4 in no way proved or produced as evidence in the trial.

5 THE COURT: We don't confine ourselves to
6 evidence in a trial. I wouldn't need a Probation
7 report if it was confined to that. Its matters outside
8 the trial that I'm interested in. In defendant's
9 background, his education, his dealings.

10 MR. ABRUZZO: But your Honor, I am referring
11 to statements allegedly made by people who were pro-
12 duced as witnesses at the time of the trial to under
13 cover officers or to the United States Attorney or to
14 some other third party, not a party to the trial whose
15 statements were never introduced, never brought before
16 the Court.

17 Now, the Court is asked to use these statements--

18 THE COURT: Do you have a copy of the report?
19 You pointed out to me.

20 MR. ABRUZZO: At page four, the report alludes
21 to certain statements made by a Mr. James McCormik
22 with regard to --

23 THE COURT: Mr. McCormik subsequently informed
24 agents that on such and such a time and such/such place,
25 he accompanied somebody to a meeting with Mr. --

1 didn't we find that in the Grand Jury minutes of
2 James McCormik.

3 MR. ABRUZZO: Your Honor, those minutes were
4 never read into evidence.

5 THE COURT: I know. I had it in a trial. In
6 the Mattio trial.

7 MR. ABRUZZO: We never had an opporutnity to
8 impeach their testimony.

9 THE COURT: All right.

10 MR. ABRUZZO: If, we're asked to use that in
11 considering this man's background. To further submit
12 his, get in this matter.

13 THE COURT: No. To weigh, to weigh the sentence
14 and evidence that's maybe inadmissible in the trial.
15 It maybe used if the Court feels it's reliable in
16 determining sentence.

17 This sentence won't depend heavily on what Mr.
18 McCormik said, but it's perfectly proper for me to use
19 it.

20 James McCormik, to me, was a reluctant witness.
21 As a matter of fact, I found him guilty of contempt
22 of Court.

23 He refused to testify in the matter he testified
24 before the Grand Jury and I know --

25 MR. ABRUZZO: That took place insomebody else's

1 trial.

2 THE COURT: I know. Do you think you have a
3 right to examine every witness who supplies information?

4 MR. ABRUZZO: No, your Honor. But when we're
5 talking about sentencing, why didn't the Probation
6 Department come to me and get statements from me like
7 they did from the United States Attorney as to Mr.
8 Indiviglio's --

9 THE COURT: Were you invited to go to the Pro-
10 bation Department and talk to the Probation Department?

11 I'm sorry, the Probation Department talked to
12 your client at length. I don't know how much he was
13 willing to disclose to them but if I didn't say go
14 down and talk to them and answer questions, have your
15 lawyer go down, I'll say it now so you supply any
16 information to rebut that.

17 The statement is, "McCormik subsequently in-
18 formed agents that Mattio had supplied him with
19 heroin to sell during 1967, and he had missed 1968.
20 He accompanied Mattio with a John Indiviglio at which
21 meeting, drugs were discussed."

22 Well, if you dispute that --

23 MR. ABRUZZO: Your Honor, I dispute that.

24 THE COURT: All right. Now --

25 MR. ABRUZZO: The next --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Who made the statements in Magistrate's court that made the basis of the severance?

MR. DE PETRIS: Mr. Mattio.

THE COURT: Mattio said what?

MR. DE PETRIS: Mattio told the --

THE COURT: He was asked the question, we know how much you were dealing, how much was Mr. Indiviglio dealing and he stated that Mr. Indiviglio was selling I believe thirty kilograms of heroin at the time.

He had a contact in France who was arrested and because of the arrest of his friend stopped for a while. Words to that effect.

MR. ABRUZZO: Of course, Mr. Indiviglio denied --

MR. DE PETRIS: No, he -- made that statement, he denied the truth of it.

THE COURT: How did you know that he took the stand and denied it?

MR. ABRUZZO: You gave me the minutes.

THE COURT: Oh, I see. Is the agent around?

MR. DE PETRIS: No, sir.

Agents have been transferred to Los Angeles.

THE COURT: Go ahead, what else?

MR. ABRUZZO: If your Honor please, a subsequent allegation of the defendant's partition sets forth on page seven, again it is hinged upon statements of

1 this key defendant McCormik.

2 THE COURT: I might say, incidentally that when
3 Mr. McCormik got on the witness stand, he didn't
4 deny that he said it before the Grand Jury.

5 He said he just couldn't quite remember.
6 He just refused to testify against Mr. Mattio. All
7 right, now page seven, again it refers to Mr. who?
8 Oh, yes.

9 MR. ABRUZZO: It regards Mr. Mattio. We're
10 talking to Mr. Indiviglio his participation or alleged
11 participation in this.

12 THE COURT: That came out at the trial. There
13 is nothing new about this. It didn't --

14 MR. ABRUZZO: The fact Mr. Mattio was shot,
15 yes.

16 THE COURT: No, no, no.

17 MR. ABRUZZO: There was no testimony, your Honor
18 except Mr. Sellma's testimony that he on occasion
19 helped him carry Mr. Indiviglio some furniture to a
20 house in Bayside. Then, we went to all your business
21 with who occupied the apartment and here they are talk
22 ing about the defendant used his apartment.

23 He didn't even have an apartment.

24 (Continued on next page.)
25

1 THE COURT: His apartment, I thought means the
2 apartment that Mattio said he occupied.

3 MR. ABRUZZO: That's what I took it to mean.

4 THE COURT: That's what I took it to mean.
5 That came out at the trial. You had the opportunity
6 to cross-examine.

7 MR. ABRUZZO: There was no testimony at the trial
8 that the defendant used Mattio's apartment.

9 THE COURT: That was a house owned by Mr. Indi-
10 viglio. Which, Mattio talked for Mr. Indiviglio into
11 using his apartment. He had an apartment it was
12 next to the Baptist church and the Baptist church
13 had on time occupied the apartment. I understood it
14 was meant and whether I believe it or not, you can't
15 argue. You didn't have the right of cross-examination
16 there because that's just what you --

17 MR. ABRUZZO: Your Honor, I'm talking not about
18 the fact I had a right of cross-examination but as
19 to the accuracy of the statement.

20 The testimony in the minutes was there were
21 two apartments. One upstairs occupied by Mr. Mattio
22 and one downstairs that was allegedly used as a labra-
23 tory.

24 THE COURT: There is no sense pointing to in-
25 accuracies in the probation report on that score. I

1 heard the testimony.

2 MR. ABRUZZO: That's correct, your Honor.

3 THE COURT: So, let's assume there was nothing
4 in the report and I remember the trial.

5 I remember the testimony. Why are we talking
6 about matters that were gone into in depth and that
7 are referred to in the probation report, when I know
8 more about it when the probation officer.

9 I was here, I heard the testimony.

10 MR. ABRUZZO: And lastly, your Honor there is
11 an allegation that there was a grand larceny charge
12 in July of 1950³, in the Criminal Court of Manhattan.
13 I have done an extensive investigation and I can't
14 find it.

15 I have checked through the District Attorney in
16 Suffolk County and he can't find it and my client denies
17 that he was ever previously arrested in his life.

18 THE COURT: Twenty-four years ago, dismiss it.
19 I'm striking it from my copy. You hadn't mentioned it
20 and I wouldn't even have remembered it.

21 MR. ABRUZZO: Those are the objections I have.

22 THE COURT: John C. Indiviglio.

23 MR. INDIVIGLIO: Yes, your Honor.

24 First, I'm innocent; number two, the thing two
25 Federal men said they seen me talking to Mr. Green,

1 which I never spoke to Mr. Green in my entire life
2 before I saw him here.

3 It was my wife's birthday that night and I
4 was with her.

5 THE COURT: I heard that testimony too.

6 MR. INDIVIGLIO: But they lied.

7 THE COURT: The Jury found you guilty and we
8 have to start with that.

9 MR. INDIVIGLIO: There was someone else, Mr.
10 Green, was good enough to say who I was talking to
11 to his attorney and my attorney and it wasn't me.

12 I feel I didn't get a proper representation
13 at the trial for something.

14 I'm not much on law.

15 THE COURT: You complaining about Mr. Abruzzo's
16 representation?

17 MR. INDIVIGLIO: No, I had the accountant here.
18 I had other witnesses here that were never called.

19 THE COURT: Well, I think I commended Mr.
20 Abruzzo by the way he handled the summation.

21 MR. INDIVIGLIO: Then, I have a lot more.

22 THE COURT: I thought he was very adequate to
23 the task.

24 MR. INDIVIGLIO: Then, I have a lot of letters I
25 had you coming in --

1 THE COURT: I see. Some Hungarian, I
2 see Margaret Speekel (phonetic), this Mrs. Wolfe, same
3 one -- no, yes, sure.

4 Mrs. Wolfe wrote, this is just a copy of what
5 -- I remember a lot of character witnesses.

6 MR. INDIVIGLIO: I had them out in --

7 THE COURT: Said you had a character witness.

8 MR. INDIVIGLIO: I could get all kinds of char-
9 acter witnesses here.

10 THE COURT: I don't doubt it.

11 MR. INDIVIGLIO: Those are people I helped out
12 in time of need.

13 THE COURT: That you should get credit for.

14 MR. INDIVIGLIO: Well, I have a lot more.

15 THE COURT: On the other hand the Jury found
16 you guilty of dealing in heroin.

17 MR. INDIVIGLIO: I never dealt in heroin in my
18 life.

19 THE COURT: I believe what the Jury tells me,
20 guilty they said.

21 MR. INDIVIGLIO: They can make mistakes, your
22 Honor.

23 THE COURT: Of course they can make mistakes.
24 Of course, they can. Of all the trials I had before
25 me, I can't think of one where I would have disagreed

1 with them where they convicted.

2 There are times, when they acquitted and I would
3 not have agreed with them.

4 MR. INDIVIGLIO: I have five children and one
5 is a little baby, two years old, suffering from the
6 day he was born practically.

7 THE COURT: Is there anything else you'd like
8 to say?

9 MR. INDIVIGLIO: Nothing much else I can say
10 except I'm innocent.

11 THE COURT: Would you like to add anything Mr.
12 Abruzzo.

13 MR. ABRUZZO: Well, your Honor, I ask the Court
14 to please take into consideration the defendant has
15 never in any way been convicted of a crime. The pro-
16 bation is before the Court.

17 THE COURT: John C. Indiviglio, the Jury having
18 found you guilty of the charge in the indictment, I
19 sentence you to the custody of the Attorney General
20 of the United States for delivery to the authorized
21 representatives who will choose a place of confinement
22 for a term of twelve years and in addition thereto,
23 I impose a special parole term of five years.

24 The Court having imposed sentence, I'm obliged
25 to advise you you have a right to appeal. If you can't

1 afford an appeal the Government will pay for your ap-
2 peal.

3 Now, inorder to preserve your right to appeal,
4 you must file a notice of appeal within ten days
5 from the date the judgement and committment is filed.
6 I intend to file a judgement and committment today,
7 which means that you will have to and including
8 October 15th, to file a notice of appeal because the
9 14th is a holiday.

10 If you wish, I will direct the Clerk to file a
11 notice of appeal for you.

12 MR. ABRUZZO: Your Honor, we wish that you direct
13 the Clerk to file a notice of appeal forthwith.

14 THE COURT: Is he entitled to the benefits of
15 the Criminal Justice Act?

16 MR. ABRUZZO: Your Honor --

17 THE COURT: Can you afford an appeal?

18 MR. ABRUZZO: I have been advised by Mr. Indi-
19 viggio that he cannot afford to retain my services
20 for an appeal. I have attempted to contact attorneys
21 specializing in Federal appeals work. I have given him
22 several names and I have recommended them to him.

23 THE COURT: I want to know at this point, whether
24 he can afford an appeal. If he can't, I can direct
25 the Clerk to file notice of appeal without fee, but if

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

he can, he must pay the Clerk \$5.

MR. ABRUZZO: Yes, he claims he can pay now.
He will pay the \$5.

THE COURT: All right. Give the Clerk \$5. and
I direct the Clerk to file a notice of appeal forthwith.

* * *

UNITED STATES COURT OF APPEALS: SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff

against

FRANK BREENE and JOHN INDIVIGLIO,

Defendants-Appellants.

Defendant

Index No.

ATTORNEY'S
AFFIRMATION OF SERVICE
BY MAIL

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

The undersigned, attorney at law of the State of New York affirms: that deponent is
associated with the
JOHN INDIVIGLIO attorney(s) of record for

That on the 20th day of December

19 74 deponent served the annexed

APPENDIX

on US. ATTORNEY for the Eastern District of New York and THEODORE KRIEGER ESQ.
attorney(s) for United States and Co-Defendant BREENE, respectively
in this action at 225 Cadman Plaza East, N.Y. and 401 Broadway, N.Y. respectively
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care
and custody of the United States post office department within the State of New York.

The undersigned affirms the foregoing statement to be true under the penalties of perjury.

Dated this 20th day of December 1974

STANLEY S. GETZOFF

Attorney at Law

Index No.

Plaintiff

against

Defendant

**AFFIDAVIT OF SERVICE
BY MAIL**

STATE OF NEW YORK, COUNTY OF

SS.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the annexed

*on
attorney(s) for
in this action at
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care
and custody of the United States post office department within the State of New York.*

Sworn to before me

this day of 19

The name signed must be printed beneath

